

**Communiqué to the Office of the Prosecutor of the International Criminal Court**

**Under Article 15 of the Rome Statute**

**Conduct of members of the Parliament of  
Australia, in relation to the situation in  
Gaza, Palestine:  
Accessorial Liability for genocide.**



4 March 2024

*Respectfully submitted by concerned Australian citizens, including Australian citizens of  
Palestinian heritage.*

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## Executive Summary

This Communiqué calls upon the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) to commence a preliminary examination of, and thereafter, with the authorisation of the Pre-Trial Chamber, an investigation into, crimes within the jurisdiction of the Court that may have been committed by members of the Australian government, its officials and the Leader of the Opposition. In the alternative, it is requested that the OTP consider the information contained in this Communiqué in the context of its ongoing investigation into the Situation in the State of Palestine. Specifically, this Communiqué analyses Australian government policy and the actions of individual members of the Australian Parliament to show that the Australian government and its most senior officials have both failed to prevent or respond to the genocide committed by Israel against Palestinians in Gaza and been complicit in the carrying out of this genocide in a manner which falls squarely within Article 25 (3)(c) and/or (d) of the Rome Statute of the ICC. The evidence compiled herein amounts to a reasonable basis for the OTP to conduct an investigation into such conduct of Australian nationals, and to seek the authorisation of the Pre-Trial Chamber for the same, alternatively, to consider the contents of this Communiqué in the context of the OTP's ongoing investigation into the Situation in the State of Palestine

Following 7 October 2023, when Palestinian militant groups led by Hamas attacked Israeli settlements and military installations, killing 1,200 Israeli civilians and military personnel while capturing over 250 individuals, Israel launched a devastatingly violent campaign against Palestinians in Gaza. Over 27,000 Palestinians have since been killed, and more than 1.7 million people in Gaza have been internally displaced. The Gaza coastal strip has been blockaded by the Israeli military, leading to food scarcity, sanitation concerns, the spread of communicable diseases, and widespread despair. Communications have regularly been cut, and the Israeli Defence Forces (IDF) have instituted a devastating bombing campaign that has almost completely destroyed Gaza's residential stock, places of worship, food outlets, cultural institutions, and educational facilities. Concurrently with this material destruction, officials of the Israeli government and military have increasingly voiced their intention to "wipe out" Palestinians living in Gaza and have explicitly employed genocidal rhetoric consistently and publicly. As this Communiqué highlights, a wide range of respected scholarly and legal sources have determined that such circumstances amount to genocide.

Since 7 October 2023, the Australian government and individual government Ministers and political figures, such as Prime Minister Anthony Albanese, Foreign Minister Penny Wong, Defence Minister Richard Marles, and Opposition Leader Peter Dutton, have provided explicit political, rhetorical, moral, military, and material support for Israel's genocidal attack, despite their indisputable knowledge of the extent of the violent attacks. These actors have sought to provide political cover for Israel in

international forums, justifying Israel’s bombing campaign as a legitimate right to self-defence that it does not, in fact, enjoy, and refusing to take any action that may positively contribute to stopping the genocidal campaign in Gaza. The Australian government, and its individual members, has, moreover, taken actions that further aggravate the ongoing genocide in Palestine through its cessation of funding for vital aid and humanitarian support.

This Communiqué submits that there is a reasonable basis to believe that members of the Australian Parliament may have aided, abetted or otherwise assisted in the commission of genocide or its attempted commission or in any other way contributed to the commission of genocide or its attempted commission by the Israeli government and the IDF in the knowledge of the intention of that group to commit genocide of the Palestinians of Gaza. The treatment of the Palestinians of Gaza by agents of the Israeli government since 7 October 2023 amounts to some of the most serious crimes within the Court’s jurisdiction (not limited to genocide)– recently referred to by the United Nations High Commissioner for Human Rights, Volker Türk, as “atrocities crimes” – and requires urgent investigation. This Communiqué contends that the actions of members of the Australian Parliament who have aided, abetted or otherwise assisted in the commission of genocide (or other atrocity crimes), or who have contributed to their commission also require urgent investigation. The same have the effect of emboldening and encouraging the principal perpetrators of such international crimes.

The authors of this Communiqué understand that the ICC is a court of last resort. The absence of domestic criminal investigations or prosecutions means that the Court should exercise its jurisdiction, as required by Article 17 of the Rome Statute. Moreover, the crime of genocide is particularly grave. Quantitatively, the genocide affects a vast number of Palestinians. Qualitatively, the nature of the crime and the manner of its commission is grave. The manner of its commission includes explicit support for instances of severe physical and mental violence against an enclosed population in Gaza and the systematic destruction of the Palestinian people by the Israeli military, with the crucial support of senior members of the Australian Parliament.

## Background and Request

This Communiqué to the Office of the Prosecutor (“OTP” or “Prosecutor”) of the International Criminal Court (“ICC” or “Court”) provides information on crimes within the jurisdiction of the Court, as envisaged in Article 15(1) of the Rome Statute of the ICC. It is submitted with a view to the opening by the Prosecutor, *proprio motu*, of an investigation into liability for genocide on the part of Australian nationals, pursuant to Article 25(3)(c) and (d) in particular, of the Rome Statute, in pursuance of Australia’s foreign policies that provide ideological support, rhetorical obfuscation, political cover, and material assistance to Israel’s *prima facie* genocidal actions against the Palestinian people across Gaza and the West Bank. Although this Communiqué focuses on the support of members of the Australian Parliament for the aggression by the Israeli military across the Occupied Territories since 7 October 2023, this request also contextually relates to crimes committed within the Court’s temporal jurisdiction, which began on 1 July 2002. It demonstrates a reasonable basis for the Prosecutor to open an investigation *proprio motu*, in accordance with Article 15 of the Rome Statute, alternatively to add the information contained in this Communiqué to the OTP’s existing investigation into the Situation in the State of Palestine.

### Account of Israel’s crimes, particularly of genocide under Article 6 of the Rome Statute<sup>1</sup>

Israel’s latest military offensive in the Occupied Territories, focused predominantly on the Gaza Strip since 7 October 2023, is said to have come as a retaliatory act hours after Palestinian resistance factions broke out of the Gaza Strip, that is surrounded by security walls and cameras, and attacked nearby Israeli settlements and military installations on the 7 October 2023. Since the attack of the Palestinian resistance, led by Hamas, left 1,200 Israeli civilians and military personnel dead, Israel has launched a disproportionately violent campaign against Palestinians in Gaza. In just the first week, the Israeli Air Force dropped 6,000 bombs on the Gaza Strip,<sup>2</sup> as the death toll inside the area surged to nearly 3,500 people, with 12,000 wounded after ten days.<sup>3</sup> As of 18:00 on 23 November 2023, as a negotiated pause in the fighting came into effect, more than 14,800 Palestinian civilians had been killed in Gaza by the Israeli offensive, including approximately 6,000 children and 4,000 women.<sup>4</sup> Since 7 October 2023,

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<sup>1</sup> The below is indebted to the work of the Center for Constitutional Rights in their ‘Emergency Legal Briefing Paper’ (18 October 2023), accessible at [https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime\\_ww.pdf](https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf), among other cited scholarly and legal authorities.

<sup>2</sup> New Arab, ‘Israel boasts of dropping 6,000 bombs on devastated Gaza in less than a week’, *The New Arab* (online, 13 October 2023) <<https://www.newarab.com/news/israel-boasts-dropping-6000-bombs-devastated-gaza>>.

<sup>3</sup> Mohammed Majed, ‘Palestinian death toll in Gaza conflict rises to 3,478, says Gaza Health Ministry’, *Anadolu Ajansi* (online, 18 October 2023) <<https://www.aa.com.tr/en/middle-east/palestinian-death-toll-in-gaza-conflict-rises-to-3-478-says-gaza-health-ministry/3025033/>>

<sup>4</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #51’, *OCHA* (online, 26 November 2023) <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-51>>

over 1.7 million people in Gaza, or nearly 80 per cent of the population, are estimated to be internally displaced, including the nearly 927,000 internally displaced persons (“IDPs”) who are sheltering in 99 facilities in the south of Gaza as of 23 November 2023.<sup>5</sup> Violence has also surged in the West Bank. Since 7 October 2023 and as of 20 February, 394 Palestinians have been killed, including 100 children, and 4,528 Palestinians, including 702 children, have been injured by Israeli defence forces; while there have been 51 Palestinian casualties from settler attacks.<sup>6</sup>

Since 7 October 2023, Israel has also severely tightened the blockade upon the Gaza Strip. The complete closure of Gaza’s borders by the Israeli military, and the passive condoning and support for Israeli citizens blocking the entry of humanitarian aid into Gaza,<sup>7</sup> has meant that food is increasingly scarce, and other much needed provisions for everyday sustenance are unavailable.<sup>8</sup> Since 11 October 2023, Gaza has suffered an electricity blackout after the Israeli authorities cut off the electricity supply, and fuel reserves for Gaza’s sole power plant are now depleted.<sup>9</sup> Communications have also been regularly cut by Israeli authorities, such as on 27 October 2023, when Israeli forces completely cut off telecommunications and internet services in Gaza, a step taken severely to limit internal communication and to isolate Gaza from the outside world.<sup>10</sup> Israel has also prevented the transmission of information into or out of Gaza by deliberately targeting journalists,<sup>11</sup> killing at least 85 as at 13 February 2024, representing ‘the deadliest period for journalists since [the Committee to Protect Journalists] began gathering data in 1992’,<sup>12</sup> and deliberately killing Palestinian civilians attempting to access internet.<sup>13</sup>

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<sup>5</sup> Ibid

<sup>6</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #123’, *OCHA* (online, 21 February 2024) <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-123>>.

<sup>7</sup> See Loveday Morris, ‘Young Israelis block aid to Gaza while IDF soldiers stand and watch’, *The Washington Post* (online 10 February 2024) <<https://www.washingtonpost.com/world/2024/02/10/gaza-aid-blockade-protest-kerem-shalom/>>.

<sup>8</sup> Al Jazeera Staff, ‘Gaza’s dire humanitarian crisis explained’, *Al Jazeera* (online, 16 October 2023) <<https://www.aljazeera.com/news/2023/10/16/gazas-dire-humanitarian-crisis-explained>>

<sup>9</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #51’, *OCHA* (online, 26 November 2023) <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-51>>

<sup>10</sup> Al Haq, ‘Initial reporting on the ongoing Israeli retaliatory attacks on Gaza (Reporting Period, 7-28 October 2023)’, *Al Haq* (online 12 November 2023) <<https://www.alhaq.org/advocacy/22044.html>>

<sup>11</sup> Najib Jobain & Samy Magby (2024), ‘Al Jazeera accuses Israel of deliberately targeting reporters killed in southern Gaza airstrike’, *PBS* (online 7 January 2024) <<https://www.pbs.org/newshour/world/al-jazeera-accuses-israel-of-deliberately-targeting-reporters-killed-in-southern-gaza-airstrike>>.

<sup>12</sup> Committee to Protect Journalists, ‘Journalist casualties in the Israel-Gaza war’, *Committee to Protect Journalists* (online, 13 February 2024) <<https://cpj.org/2024/02/journalist-casualties-in-the-israel-gaza-conflict/>>.

<sup>13</sup> Euro-Med Human Rights Monitor, ‘Gaza: Israel targets Palestinian civilians trying to access communications and internet services’, *Euro-Med Human Rights Monitor* (online, 13 February 2024) <<https://euromedmonitor.org/en/article/6154/Gaza:-Israel-targets-Palestinian-civilians-trying-to-access-communications-and-internet-services>>.

Further, Israel has extensively targeted, attacked, and destroyed refugee camps,<sup>14</sup> hospitals,<sup>15</sup> schools,<sup>16</sup> UN facilities,<sup>17</sup> and other civilian infrastructure in well-documented aggressions that have had unclear or unconvincing military justification.

Israel's military and political leadership has framed the destruction of Gaza in such a way that has dehumanised the Palestinian population under attack. Israel's Defence Minister, Yoav Gallant, stated that:

*"I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed... We are fighting human animals, and we are acting accordingly".<sup>18</sup>*

On 10 October 2023, the head of the IDF's Coordinator of Government Activities in the Territories, Maj. Gen. Ghassan Alian addressed Gaza residents directly, saying: *"Human animals must be treated as such. There will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell".<sup>19</sup>* The same day, IDF spokesperson Daniel Hagari acknowledged the wanton and intentionally destructive nature of Israel's bombing campaign in Gaza: *"The emphasis is on damage and not on accuracy".<sup>20</sup>*

In addition, Israeli Prime Minister Benjamin Netanyahu promised to turn the besieged Palestinian coastal strip into a "deserted island",<sup>21</sup> and an unnamed Israeli Defence official vowed that Gaza would

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<sup>14</sup> Emma Graham-Harrison, 'Israeli airstrikes kill 80 in Palestinian refugee camp', *The Guardian* (online, 19 November 2023) <<https://www.theguardian.com/world/2023/nov/18/israeli-airstrikes-kill-80-in-palestinian-refugee-camp>>.

<sup>15</sup> Helen Livingstone, 'What is Gaza's Indonesian hospital and why is Israel targeting it?', *The Guardian* (online, 21 November 2023) <<https://www.theguardian.com/world/2023/nov/21/what-is-gaza-indonesian-hospital-why-israel-targeting-it>>

<sup>16</sup> Al Jazeera Staff, 'Many killed in Israeli attacks on two schools in northern Gaza', *Al Jazeera* (online, 18 November 2023) <<https://www.aljazeera.com/news/2023/11/18/israeli-forces-strike-al-fakhoora-school-in-northern-gaza>>

<sup>17</sup> Ikram Kouachi, 'Many killed, injured in bombing of UN compound in Gaza', *Anadolu Ajansi* (online, 12 November 2023) <<https://www.aa.com.tr/en/europe/many-killed-injured-in-bombing-of-un-compound-in-gaza/3051512>>

<sup>18</sup> Emanuel Fabian, 'Defense minister announces 'complete siege' of Gaza: No power, food or fuel', *Times of Israel* (online, 9 October 2023) <[https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/)>

<sup>19</sup> Mondoweiss, "'Operation Al-Aqsa Flood' Day 4: 'You wanted hell, you will get hell,' Israeli army chief says, calling Palestinians 'human animals'", *Mondoweiss* (online, 10 October 2023) <<https://mondoweiss.net/2023/10/operation-al-aqsa-flood-day-4-you-wanted-hell-you-will-get-hell-israeli-army-chief-says-calling-palestinians-human-animals/>>

<sup>20</sup> Bethan McKernan and Quique Kierszenbaum, "'We're focused on maximum damage': ground offensive into Gaza seems imminent", *The Guardian* (online, 11 October 2023) <<https://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>>

<sup>21</sup> Al Jazeera Staff, 'Fears of a ground invasion of Gaza grow as Israel vows 'mighty vengeance'', *Al Jazeera* (online, 7 October 2023) <<https://www.aljazeera.com/news/2023/10/7/world-is-watching-fears-grow-of-a-massive-gaza-invasion-by-israel>>

be wiped out and reduced to a “city of tents”.<sup>22</sup> Subsequent to his statement noted above, on 11 October 2023, Israeli Defence Minister Yoav Gallant announced that Israel was moving to “a full-scale response” and that he had “removed every restriction” on Israeli forces, as well as stating: “*Gaza won’t return to what it was before. We will eliminate everything*”.<sup>23</sup>

The actions and rhetoric of the Israeli government since 7 October 2023, some of which are set out above, have been noted by legal experts, humanitarian organisations, and the United Nations (“UN”) as constituting ongoing evidence of genocide against the Palestinian people in Gaza. The Center for Constitutional Rights recognises that Palestinians and Palestinian human rights organisations have long warned of the likelihood of genocide being the inevitable frame through which to assess the widespread and systematic violations being committed against people across the occupied Palestinian territory and urged States to take action before it advanced. The Center for Constitutional Rights argues that a clear inference of genocide can be drawn not only from the words used by Israeli government officials, but also by the fact that they have been followed up with military actions aimed at achieving the stated goal, such as: a siege and closure that is creating the conditions of life to bring about the destruction of the group, in whole or in part by cutting off food, water, electricity and fuel for the entire Palestinian population in Gaza; the resulting denial of access to healthcare due to lack of fuel and electricity as well as the bombing of medical staff, ambulances, multiple medical facilities and hospitals; the denial of safety by bombing civilians and civilian infrastructure, including apartment buildings resulting in the killing of entire families; the bombing of schools, religious sites and critical infrastructure; and giving orders for mass evacuations in short periods of time in a closed area under bombardment, causing terror across the population and in a context where such displacement is understood as intended to be permanent.<sup>24</sup>

On 15 October 2023, over 800 scholars and practitioners of international law, conflict studies and genocide studies signed a public statement warning of the possibility of genocide being perpetrated by Israeli forces against Palestinians in the Gaza Strip. Signatories include prominent Holocaust and genocide studies scholars, as well as many international law and Third World Approaches to International Law (TWAIL) scholars.<sup>25</sup> Further, Raz Segal, a prominent Associate Professor of

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<sup>22</sup> Yaron Steinbuch, ‘Israeli defense official says Gaza will be reduced to a ‘city of tents’ while a politician calls for nuclear bombs’, *New York Post* (online, 11 October 2023) <<https://nypost.com/2023/10/11/israeli-official-says-gaza-will-be-made-a-city-of-tents/>>

<sup>23</sup> Tuqa Khalid, ‘Defense min: Israel moving to full offense, Gaza will never go back to what it was’, *Alarabiya News* (online, 11 October 2023) <<https://english.alarabiya.net/News/middle-east/2023/10/11/Defense-min-Israel-moving-to-full-offense-Gaza-will-never-go-back-to-what-it-was>>

<sup>24</sup> Center for Constitutional Rights, ‘Emergency Legal Briefing Paper (18 October 2023)’, Center for Constitutional Rights (online, 18 October 2023) [https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime\\_ww.pdf](https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf), pp. 38-39

<sup>25</sup> ‘Public Statement: Scholars Warn of Potential Genocide in Gaza’, *Third World Approaches to Int’l L. Rev.* (online 17 October 2023), <<https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/>>



Holocaust and Genocide Studies at Stockton University, explicitly referred to Israel's actions in Gaza as a case of genocide.<sup>26</sup>

There have now been repeated calls from experts and specialists at the United Nations to prevent the ongoing genocide in Gaza. On 20 October 2023, eight United Nations Special Rapporteurs stated:

*"We are sounding the alarm: There is an ongoing campaign by Israel resulting in crimes against humanity in Gaza. Considering statements made by Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing in the West Bank, there is also a risk of genocide against the Palestinian people. There are no justifications or exceptions for such crimes."*<sup>27</sup>

On 2 November 2023, several UN Special Rapporteurs warned, in a press release, that the 'Palestinian people are at grave risk of genocide'.<sup>28</sup> Then, on 16 November 2023, dozens of UN Special Rapporteurs and experts called on the international community to prevent genocide against the Palestinian people, saying that *"the international community has an obligation to prevent atrocity crimes, including genocide, and should immediately consider all diplomatic, political and economic measures to that end"*.<sup>29</sup>

On 3 November 2023, former ICC Prosecutor Luis Moreno-Ocampo said:

*"...the siege of Gaza itself, that is a termination or persecution as a crime against humanity and is a form of genocide. Article 6(c) or II(c) of the Genocide Convention define that you don't need to kill people to commit genocide. The rules say: 'inflicting conditions to destroy the group, that itself is a genocide'. So, creating the siege itself is a genocide. And that is very clear. That Israel wants the siege is very clear. And the intentions to destroy the people - many officers from the Israeli government are expressing genocidal intentions. That's why it's easy to say and the reasonable basis to believe Israel is committing a genocide in Gaza, just on the siege. Then,*

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<sup>26</sup> Raz Segal, 'A Textbook Case of Genocide', *Jewish Currents* (online 13 October 2023), <<https://jewishcurrents.org/a-textbook-case-of-genocide>>

<sup>27</sup> United Nations, 'Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide', *UN* (19 October 2023) <<https://www.ohchr.org/en/press-releases/2023/10/gaza-unexperts-decry-bombing-hospitals-and-schools-crimes-against-humanity>>

<sup>28</sup> UN, 'Gaza is 'running out of time' UN experts warn, demanding a ceasefire to prevent genocide', *UN* (online, 2 November 2023) <<https://www.un.org/unispal/document/gaza-is-running-out-of-time-un-experts-warn-demanding-a-ceasefire-to-prevent-genocide/>>

<sup>29</sup> UN, 'Gaza: UN human rights experts call on international community to prevent genocide against the Palestinian people – OHCHR Press Release', *UN* (online 16 November 2023) <<https://www.un.org/unispal/document/gaza-un-human-rights-experts-call-on-international-community-to-prevent-genocide-against-the-palestinian-people-ohchr-press-release/>>

*each bombing, each of the killings should be properly investigated. But, come on, we have already clear, the siege itself is a genocide”.*<sup>30</sup>

The charge of genocide has been raised in relation to Israel’s actions towards Palestinians living in Gaza since 7 October 2023 because the evidence that constitutes this most heinous of crimes is becoming increasingly undeniable. Genocide is a crime distinguished by the specific intent to target a group on recognised grounds through a series of acts often reflected in and achieved through State policies. As the United Nations General Assembly underscored in 1946, the “*denial of the right of existence shocks the conscience of [hu]mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations*”.<sup>31</sup> The 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* (“the Genocide Convention”) defines genocide as committing specified acts “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>32</sup> The “group” is what must be targeted,<sup>33</sup> on grounds including nationality or ethnicity; it is the “group” that is protected.<sup>34</sup> The “part” targeted for destruction can be represented by a subgroup, for example, in a specific geographic area.<sup>35</sup> Palestinians living in Gaza, as part of the Palestinian population, may constitute the targeted group for the purposes of the Genocide Convention.<sup>36</sup>

Article II of the Genocide Convention defines the crime of genocide by two main elements: (1) specific underlying acts, and (2) intent. The same elements define the crime of genocide in the Rome Statute, as well as in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).<sup>37</sup>

The first element, specific underlying acts, includes any of the following:

*“(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its*

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<sup>30</sup> Luis Moreno Ocampo, ‘Former ICC chief prosecutor: Israel’s siege of Gaza is a ‘genocide’’, *Al Jazeera* (online, 1 December 2023) <<https://www.aljazeera.com/program/upfront/2023/12/1/former-icc-chief-prosecutor-israels-siege-of-gaza-is-a-genocide>>

<sup>31</sup> UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

<sup>32</sup> *Ibid*, art. 2, chapeau.

<sup>33</sup> See, e.g., *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgment, para. 165 (Jan. 27, 2000).

<sup>34</sup> See *Prosecutor v. Krstić*, Case No. IT-98-33, Appellate Chamber Judgment, Partial Dissenting Opinion of Judge Shahabuddin, para. 50 (Apr. 19, 2004) (explaining that in the context of the massacre of 8,000 Bosnian Muslims at Srebrenica, “A group is constituted by characteristics - often intangible - binding together a collection of people as a social unit”).

<sup>35</sup> *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Trial Judgement (Int’l Crim. Trib. for the Former Yugoslavia Jan. 17, 2005).

<sup>36</sup> ICJ *South Africa v Israel* Provisional Measures Decision, [28] - [32].

<sup>37</sup> See *Rome Statute*, art. 6; see also, *Statute of the International Tribunal for the Former Yugoslavia*, art. 4 (adopted by U.N. S/RES/827, May 25, 1993); *Statute of the International Criminal Tribunal for Rwanda*, art. 2 (adopted by U.N. S/RES/955, Nov. 8, 1994).

*physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group”.*

There is no minimum number of people killed necessary to establish that genocide has been committed.<sup>38</sup> However, the scale of killing in Gaza by the IDF is extreme; already by 13 November 2023, over 11,000 Palestinians had been killed by the Israeli military since 7 October 2023, which is one out of every 200 people.<sup>39</sup> Further, approximately 36,000 Palestinians were physically injured as a result of Israel’s offensive during this time,<sup>40</sup> with the full mental health and trauma impacts of the conflict so far difficult to assess.<sup>41</sup> As at 13 February 2024, at least 28,473 Palestinians had been killed in Gaza and 68,146 Palestinians had been injured by Israeli attacks since 7 October 2023.<sup>42</sup>

As is particularly relevant to the unfolding situation in Gaza, and as highlighted by former Prosecutor Moreno-Ocampo (quoted above), deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part is sufficient to establish genocide. As the ICTR found when it rendered the first genocide conviction by an international court: “*subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below the minimum requirement*” constituted the crime of genocide as “*methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction*”.<sup>43</sup> Further, other examples of “conditions of life” calculated to bring about a group’s physical destruction, in whole or in part, given by international tribunals in the context of the Rwandan and Srebrenica genocides include denying medical services;<sup>44</sup> systematically expelling members of the group from their homes;<sup>45</sup> and creating circumstances that would “lead to a slow death,” such as the lack of proper housing, water, shelter, clothing, hygiene, sanitation, or proper food including

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<sup>38</sup> “There is no numeric threshold of victims necessary to establish genocide, even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article 2 of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.” *Prosecutor v Muhimana*, Case No. ICTR-95-1BT, Judgment, para. 498 (Apr. 28 2005).

<sup>39</sup> Ruby Mellen, Artur Galocha and Júlia Ledur, ‘Gaza reports more than 11,100 killed. That’s one out of every 200 people’, *The Washington Post* (online 13 November 2023) <<https://www.washingtonpost.com/world/interactive/2023/gaza-rising-death-toll-civilians/>>.

<sup>40</sup> As of 27 November 2023, see <https://www.ochaopt.org/>.

<sup>41</sup> Maram Humaid, ‘Amid Israel’s attacks Gaza’s traumatised children need psychological aid’, *Al Jazeera* (online 20 November 2023) <<https://www.aljazeera.com/news/2023/11/20/no-end-in-sight-gazas-traumatised-children-need-psychological-aid>>

<sup>42</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #117’, *OCHA* (online, 13 February 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-117>>.

<sup>43</sup> See *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, Trial Judgment (Sept. 2, 1998), para. 505-506.

<sup>44</sup> *Prosecutor v Popović et al.*, Case No. IT-05-88-T, Trial Judgment, para. 815 (Jun. 10, 2010); *Prosecutor v Musema*, Case No. ICTR-96-13-T, Trial Judgment, para. 157

<sup>45</sup> See, e.g., *Prosecutor v Brđanin*, Case No. IT-99-36, Trial Judgment, para. 691 (Sept. 1, 2004); *Prosecutor v Stakić*, Case No. IT-97-24-T, Trial Judgment, para. 517 (Jul. 31, 2003); *Prosecutor v Akayesu*, para. 506

by subjecting people to a subsistence diet, or subjecting members of the group to excessive work or physical exertion.<sup>46</sup>

Since Sunday, 8 October 2023, and as noted above, Israel has imposed a total siege on Gaza, cutting off its electricity, water and food supplies and preventing access to humanitarian aid. These acts appear to constitute various breaches of international humanitarian law, though, for the purposes of this Communiqué, they *prima facie* also fulfil the element of ‘deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part’, as per the above-cited judgements of the ICTY and ICTR, and Article 6 of the Rome Statute.

The second element of the crime of genocide is that of specific intent. This requires that acts be committed “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>47</sup> Genocidal or specific intent refers to the result of destroying the group (in whole or in part) being intended; it is the group *qua* group (and not only certain individual members of the group) that must be targeted for destruction, in whole or in part.<sup>48</sup> This specific intent may be proven from the facts and circumstances of a case.<sup>49</sup>

Evidence of specific intent can include, but is not limited to, the general context; the scale of atrocities; the systematic targeting of victims on account of their membership in a particular group; other culpable acts systematically directed against the same group; or the repetition of destructive and discriminatory acts.<sup>50</sup> While forcible transfer is not deemed a stand-alone indication of the intent to destroy, it is a relevant consideration when assessing genocidal intent.<sup>51</sup> The existence of a plan or policy can also be a factor pointing to specific intent, but it is not a requirement.<sup>52</sup> Genocidal intent may also be inferred from public speeches and statements by officials.<sup>53</sup> It has been observed that explicit manifestations of criminal intent are “often rare in the context of criminal trials”, and thus inferring intent from relevant facts and circumstances, “prevents perpetrators from escaping convictions simply because such manifestations are absent”.<sup>54</sup>

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<sup>46</sup> See, e.g., *Prosecutor v. Akayesu*, para. 523; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Trial Judgment, para. 517; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Trial Judgment, para. 547 (Mar. 24, 2016).

<sup>47</sup> UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, art. 2

<sup>48</sup> See e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, para. 139 (“ICJ Croatia 2015 Judgment”)

<sup>49</sup> *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeal Judgment, para. 47 (July 5, 2001) (“*Jelisić Appeal Judgment*”).

<sup>50</sup> *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeal Judgment, para. 47; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Trial Judgment, para 550

<sup>51</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Trial Judgment, para. 824.

<sup>52</sup> *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeal Judgment, para. 48.

<sup>53</sup> See generally *Prosecutor v. Nahimana et al.*, (“Media Trial”), Case No. ICTR-99-52-A, Appeal Judgment (Nov. 28, 2007)

<sup>54</sup> *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Trial Judgment, para. 525 (May 26, 2003).

In this latter regard, the actions and comments of the Israeli government are relatively unique in their specificity and depth of obvious genocidal intent, especially to “deliberately inflict...on the group conditions of life calculated to bring about its physical destruction in whole or in part”. As noted above, including in the above-quoted comments of former Prosecutor Moreno-Ocampo, and explored in more detail elsewhere [ANNEXURE A – ‘Israeli statements and actions and Australian Minister replies’],<sup>55</sup> Israel’s military and political leadership have expressed their intention to destroy Palestinians in Gaza, likening them to “human animals”, with an emphasis on maximum damage in their military actions. On 8 October 2023, Ariel Kallner, a member of the Israeli Parliament for Prime Minister Netanyahu’s Likud party demanded a repeat of the mass expulsion and murder of Arabs in 1948, known to Palestinians as the “Nakba” or Catastrophe. “*Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 1948,*” he said.<sup>56</sup> On 11 October 2023, reservist Major General Giora Eiland told Israeli media that it was necessary to create: “*a severe humanitarian crisis in Gaza...to achieve the goal [of eliminating Hamas and their support base]. Gaza will become a place where no human being can exist*”.<sup>57</sup> Then, on 13 October 2023, Israeli President Isaac Herzog said, “*It is an entire nation out there that is responsible. It’s not true, this rhetoric about civilians [being] not aware, not involved. It’s absolutely not true*”.<sup>58</sup> Israeli Prime Minister Benjamin Netanyahu has been one of the most outspoken proponents of genocidal intent, with several examples abounding, such as vowing to turn Gaza into a “deserted island”, while Defence Minister Yoav Gallant promised to “eliminate everything” as noted above. These statements, from the highest levels of Israel’s political and military establishments, demonstrate a clear intent to commit genocide.

The aforementioned supporting evidence of genocide *prima facie* committed by Israel against Palestinians in Gaza has more recently been validated by important international and domestic courts. On 26 January 2024, the International Court of Justice (ICJ) indicated provisional measures in response to the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* on 29 December 2023. After ruling that the Court had jurisdiction to

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<sup>55</sup> See the following for examples of the genocidal rhetoric and planning of the Israeli Government relating to Gaza following 7 October: Raz Segal, ‘A Textbook Case of Genocide’, *Jewish Currents* (online 13 October 2023) <<https://jewishcurrents.org/a-textbook-case-of-genocide>>; Michael Barnett, ‘Is Israel on the precipice of genocide?’, *Political Violence at a Glance* (online 6 March 2023), <<https://politicalviolenceataglance.org/2023/03/06/is-israel-on-the-precipice-of-genocide/>>; Chris McGreal, ‘The language being used to describe Palestinians is genocidal’, *The Guardian* (online 16 October 2023) <<https://www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal>>

<sup>56</sup> See, for example, Yusra Asif, ‘Israeli Knesset member calls for second ‘Nakba’ amid ongoing conflict with Hamas’, *Al Arabiya News* (online 8 October 2023) <<https://english.alarabiya.net/News/middle-east/2023/10/08/IsraeliKnesset-member-calls-for-second-Nakba-amid-ongoing-conflict-with-Hamas>>

<sup>57</sup> Paddy Dowling, ‘Why Israel’s ban on fuel to Gaza isn’t about stopping Hamas’, *Al Jazeera* (online 25 October 2023) <<https://www.aljazeera.com/news/2023/10/25/gaza-is-out-of-fuel-out-of-time-under-israels-bombardment>>

<sup>58</sup> Chris McGreal, ‘The language being used to describe Palestinians is genocidal’, *The Guardian* (online 16 October 2023) <<https://www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal>>

deal with the case and that Palestinians constitute a distinct ‘national, ethnical, racial or religious group’ and hence a protected group as per the Genocide Convention, the Court overwhelmingly concluded that ‘Palestinians in Gaza [are] to be protected from acts of genocide and related prohibited acts identified in Article III, and [there was] the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention’.<sup>59</sup> In this provisional ruling, the ICJ found there is a “*real and imminent risk of irreparable prejudice*” to the “*right of the Palestinian group in the Gaza Strip to be protected from acts of genocide and related prohibited acts identified in Article III of the Genocide Convention*”,<sup>60</sup> and determined that Israel must, in accordance with its obligations under the Genocide Convention in relation to Palestinians in Gaza:

*“take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group. The Court recalls that these acts fall within the scope of Article II of the Convention when they are committed with the intent to destroy in whole or in part a group as such. The Court further considers that Israel must ensure with immediate effect that its military forces do not commit any of the above-described acts”*.<sup>61</sup>

Further, the Court considered that Israel,

- “*must take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip*” (some of which are documented above),
- “*must take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip*”, and
- “*must also take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Genocide Convention against members of the Palestinian group in the Gaza Strip*”.<sup>62</sup>

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<sup>59</sup> ICJ, ‘*South Africa v. Israel: Request for the Indication of Provisional Measures*’, ICJ, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-sum-01-00-en.pdf>>, p. 5.

<sup>60</sup> Ibid, p. 6.

<sup>61</sup> Ibid, p. 7.

<sup>62</sup> Ibid.

These provisional orders indicate that the Court accepted there is a plausible case that Palestinians in Gaza have a right to be protected from genocide.<sup>63</sup>

However, since the ICJ provisional ruling, there has been no change in the conduct of the State of Israel. Civilian casualty numbers remain extremely high, as the following Table (Table One) indicates. These figures are only slightly below the early January 2024 recorded average of 250 Palestinians killed per day, which is a rate that is higher than in any recent major armed conflict.<sup>64</sup>

| Reported Date (accounting for the previous 24-hour period) | Palestinian Casualties (mostly civilian, as reported) |
|--|---|
| 28 January 2024  | 165 killed, 290 injured. <sup>65</sup>                |
| 29 January 2024  | 215 killed, 300 injured. <sup>66</sup>                |
| 30 January 2024  | 114 killed, 249 injured. <sup>67</sup>                |
| 31 January 2024  | 150 killed, 313 injured. <sup>68</sup>                |
| 1 February 2024  | 118 killed, 190 injured. <sup>69</sup>                |
| 2 February 2024  | 112 killed, 148 injured. <sup>70</sup>                |
| 3 February 2024  | 107 killed, 165 injured. <sup>71</sup>                |
| 4 February 2024  | 127 killed, 178 injured. <sup>72</sup>                |

**Table 1** Reported Palestinian Casualties following the 26 January 2024 ICJ ruling.

<sup>63</sup> ICJ, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)’, ICJ, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>>, [54].

<sup>64</sup> Oxfam, ‘Daily death rate in Gaza higher than any other major 21st Century conflict – Oxfam’, *Oxfam* (online, 11 January 2024), <<https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict-oxfam>>.

<sup>65</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #104’, *OCHA* (online, 28 January 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-104>>.

<sup>66</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #105’, *OCHA* (online, 29 January 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-105>>.

<sup>67</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #106’, *OCHA* (online, 30 January 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-106>>.

<sup>68</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #107’, *OCHA* (online, 31 January 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-107>>.

<sup>69</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #108’, *OCHA* (online, 1 February 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-108>>.

<sup>70</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #109’, *OCHA* (online, 2 February 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-109>>.

<sup>71</sup> OCHA, ‘Hostilities in the Gaza Strip and Israel | Flash Update #110’, *OCHA* (online, 4 February 2024), <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-110>>.

<sup>72</sup> *Ibid.*

Following the ICJ ruling, several human rights and legal organisations have called on the Australian government to ‘act in accordance with Australia’s legal responsibilities under the Genocide Convention, the Rome Statute, and the interim measures set out by the Court’, by ceasing military exports to Israel, demanding an immediate ceasefire, stopping political and diplomatic support to Israel, supporting greater humanitarian aid to Gaza, and ensuring accountability for international crimes occurring across the Occupied Territories.<sup>73</sup> However, there has been minimal official comment on the ICJ case by Australian government Ministers, and there have been no apparent changes in Australian government actions or behaviours in relation to the conflict. A spokesperson for Foreign Minister Penny Wong made a non-committal statement in response to the ruling as follows:

*“Australia’s position has been clear and consistent throughout this crisis. We have consistently urged all parties to the conflict to respect international humanitarian law, advocated for humanitarian access, and called for civilians to be protected and hostages released”.*<sup>74</sup>

Prime Minister Albanese mentioned the ICJ provisional ruling at a doorstep interview in Orange, NSW, which was prompted by a question from a journalist. The journalist asked the Prime Minister: ‘the International Court of Justice has ruled that South Africa's claim of Israel committing genocide against the Palestinian people is plausible. Do you welcome that?’, to which the Prime Minister replied:

*“This is a process of which Australia is not a party. We’ve made very clear our position, which is that every human life matters, whether it be Israeli or Palestinian”.*<sup>75</sup>

The avoidance of and wilful blindness to the legal ramifications and obligations upon the Australian government resulting from the ICJ provisional ruling, exemplified by the relative silence and non-commitment of its highest Ministers and members of Parliament, is a cause for serious concern; and, more decisively, this inaction suggests a failure to prevent or respond to a reasonable risk of genocide, an offence under the Genocide Convention, as analysed below. It further suggests accessorial liability for genocide within the terms of Article 25(3)(c) and/or (d) of the Rome Statute, as analysed below.

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<sup>73</sup> For example, Human Rights Law Centre, ‘ICJ South Africa v. Israel: Human Rights Law Centre statement’, *Human Rights Law Centre* (online), <<https://www.hrlc.org.au/news/2024/2/1/icj-south-africa-v-israel-human-rights-law-centre-statement>>; Australian Centre for International Justice, ‘Australia has a duty to prevent genocide in Gaza and act to implement ICJ ruling that Israel’s actions in Gaza are a plausible genocide’, *Australian Centre for International Justice* (online 27 January 2024), <<https://acij.org.au/media-release-australia-has-a-duty-to-prevent-genocide-in-gaza-and-act-to-implement-icj-ruling-that-israels-actions-in-gaza-are-a-plausible-genocide/>>; International Legal Scholars Against Genocide, ‘Open Letter to the Australian government regarding the ICJ provisional measures ruling’, *The Overland* (online 31 January 2024), <<https://overland.org.au/2024/02/open-letter-to-the-australian-government-regarding-the-icj-provisional-measures-ruling/>>.

<sup>74</sup> AAP, ‘Government responds to International Court's Gaza ruling as Greens call for more action’, *SBS* (online 27 January 2024), <<https://www.sbs.com.au/news/article/government-responds-to-international-courts-gaza-ruling-as-greens-call-for-more-action/6j528sq8r>>.

<sup>75</sup> Doorstop Interview - Orange, Prime Minister of Australia (27 January 2024), <<https://www.pm.gov.au/media/doorstop-interview-orange>>.



Indeed, because Israel’s relentless genocidal attacks on the Palestinian people in Gaza have arguably worsened since the 26 January 2024 ruling by the ICJ, as the IDF prepared an assault on the area of Rafah that hosts some 1.5 million displaced Palestinians as at early February 2024, South Africa took the unprecedented step of petitioning the ICJ with an urgent request for additional measures on 12 February 2024. South Africa requested that the ‘Court exceptionally consider exercising its power under Article 75(1) of the Rules of Court’, which provides that: "The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties".<sup>76</sup> In doing so, South Africa urgently asked the ICJ to intervene and exercise its power under Article 75(1) to ‘prevent further imminent breach of the rights of Palestinians in Gaza’, underscoring the extreme seriousness of the situation for Palestinians in Gaza.

More recently, a United States District Court, the Northern District of California, also examined the evidence presented above of potential genocide committed by Israel against Palestinians in Gaza. On 13 November 2023, the Center for Constitutional Rights filed a case on behalf of Palestinian plaintiffs against President Joe Biden, Secretary of Defense Lloyd Austin, and Secretary of State Antony Blinken for the US officials’ alleged ‘failure to prevent and complicity in the unfolding genocide against Gaza’. On 31 January 2024, the sitting judge dismissed the case as his Honour ruled that the Court lacked jurisdiction over US foreign policy because of the US Constitution's political question doctrine, which meant that the ‘claims alleged...raise fundamentally non-justiciable political questions’.<sup>77</sup> However, the judge noted that “*the undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law*”.<sup>78</sup> Indeed, the Court would have preferred to have issued the injunction if it had not been constitutionally barred from doing so and urged President Biden to rethink U.S. policy, with his Honour writing:

*“There are rare cases in which the preferred outcome is inaccessible to the Court. This is one of those cases. The Court is bound by precedent and the division of our coordinate branches of government to abstain from exercising jurisdiction in this matter. Yet, as the ICJ has found, it is plausible that Israel’s conduct amounts to genocide. This Court implores Defendants to examine the results of their unflagging support of the military siege against the Palestinians in Gaza”.*<sup>79</sup>

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<sup>76</sup> See <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240212-wri-01-00-en.pdf>.

<sup>77</sup> *Defense for Children International – Palestine et al., v. Joseph Biden* [2024], United States District Court – Northern District of California 4:23-cv-05829-JSW, p. 5.

<sup>78</sup> *Ibid*, p. 4.

<sup>79</sup> *Ibid*, p. 8.

In 2014,<sup>80</sup> the United Nations Office on Genocide Prevention and the Responsibility to Protect adopted the *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (“the Framework”). The Framework identifies fourteen risk factors for “atrocity crimes” such as genocide while stressing that “not all risk factors need to be present for there to be an assessment that there is a significant risk” of atrocity crimes occurring, but the more “that are present, the greater the risk that an atrocity crime may be committed.” The risk factors include, but are not limited to: Situations of armed conflict or other forms of instability; record of serious violations of international human rights and humanitarian law; capacity to commit genocide and other atrocity crimes; inter-group tensions or patterns of discrimination against protected groups; signs of an intent to destroy in whole or in part a protected group; signs of a widespread or systematic attack against any civilian population; serious threats to those protected under international humanitarian law; and serious threats to humanitarian and or peacekeeping operations. From the brief factual evidence presented above, alongside the extensive reports written by the United Nations, international organisations, and human rights bodies, many of whom are cited here, alongside recent decisions by international and US-based courts, it appears that most, if not all, of the risk factors identified in the *Framework* are present in Israel’s unfolding genocide against Palestinian people in Gaza.

## Framework and Context

Australia has a long history of strong diplomatic, political, security, military and economic ties with Israel. Australia was the first country to vote in favour of the 1947 UN partition resolution, which ultimately led to the creation of Israel as a nation state. Australia established diplomatic relations with Israel in 1949 and, in the same year, presided over the vote admitting Israel to the United Nations.<sup>81</sup>

Australian government policy towards the Israel-Palestinian conflict up until 2012 is comprehensively detailed in existing Parliamentary Library Research Papers: *Australia and the Middle East conflict: a history of key Government statements (1947–2007)*,<sup>82</sup> and *The Rudd and Gillard Governments and the Israeli-Palestinian Conflict: November 2007–May 2012*.<sup>83</sup>

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<sup>80</sup> United Nations Office of Genocide Prevention and the Responsibility to Protect, ‘Framework of Analysis for Atrocity Crimes: A Tool for Prevention iii (2014)’, *OHCHR*, <<https://www.ohchr.org/sites/default/files/2021-11/Genocide-Framework-of-Analysis-English.pdf>>

<sup>81</sup> Department of Foreign Affairs and Trade, ‘Israel Country Brief’, *Australian government*, <<https://www.dfat.gov.au/geo/israel/israel-country-brief>>.

<sup>82</sup> Marty Harris, ‘Australia and the Middle East conflict: a history of key Government statements (1947–2007)’, *Parliament of Australia*, <[https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1845738/upload\\_binary/1845738.pdf](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1845738/upload_binary/1845738.pdf)>

<sup>83</sup> Marty Harris, ‘The Rudd and Gillard Governments and the Israeli-Palestinian conflict: November 2007–May 2012’, *Parliament of Australia*, <[https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1845733/upload\\_binary/1845733.pdf](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1845733/upload_binary/1845733.pdf)>

The Table below (Table 2) outlines Australia’s voting patterns on UN General Assembly Resolutions on Israel/Palestine between 1995 and 2021.<sup>84</sup> It is evident that Australia’s vote on several recurring UN resolutions on the Israeli-Palestinian conflict changed following the Coalition’s election in September 2013, with the Abbott Government shifting its vote on two key resolutions from ‘in favour’ to ‘abstain’. The first called for Israel (as the occupying power) to comply with the 1949 Geneva Conventions in relation to the occupied Palestinian territories. The second supported a cessation order on Israeli settlements in those occupied territories. This marked a return to the policy position of the late Howard years. In the interim, from 2008, the Rudd and Gillard Labor governments had changed Australia’s vote on those issues to ‘in favour’ from the previous ‘abstain’.<sup>85</sup>

| <b>Australia’s votes: Key recurring UN General Assembly Resolutions on Israel/Palestine</b> |   |   |  |  |
|---|---|---|--|--|
| <b>Year/UNGA session</b>  | <b>Israeli settlements are illegal<sup>86</sup></b> | <b>The right of the Palestinian people to self-determination<sup>87</sup></b> | <b>The Fourth Geneva Convention applies<sup>88</sup></b>   | <b>Permanent sovereignty of the Palestinian people over natural resources<sup>89</sup></b> |
| <b>2023/78</b>  | In favour   | In favour   | -  | <b>Abstain</b>   |
| <b>2022/77</b>  | <b><u>In favour</u></b>                             | <b><u>In favour</u></b>   | -  | <b>Abstain</b>   |
| <b><i>Labor Government elected</i></b>  |   |   |  |  |
| <b>2021/76</b>  | <b>Abstain</b>                                      | <b>Abstain</b>  | -  | <b>Abstain</b>   |
| <b>2020/75</b>  | <b>Abstain</b>                                      | <b>Abstain</b>  | [Merged into ‘Israeli settlements are illegal’ resolution] | <b>Abstain</b>   |
| <b>2019/74</b>  | <b>Abstain</b>                                      | <b>Abstain</b>  | <b>Abstain</b>   | <b>Abstain</b>   |
| <b>2018/73</b>  | <b>Abstain</b>                                      | <b>Abstain</b>  | <b>Abstain</b>   | <b>Abstain</b>   |
| <b>2017/72</b>  | <b>Abstain</b>                                      | In favour   | <b>Abstain</b>   | <b>Abstain</b>   |
| <b>2016/71</b>  | <b>Abstain</b>                                      | In favour   | <b>Abstain</b>   | <b>Abstain</b>   |
| <b>2015/70</b>  | <b>Abstain</b>                                      | In favour   | <b>Abstain</b>   | <b>Abstain</b>   |
| <b>2014/69</b>  | <b>Abstain</b>                                      | In favour   | <b>Abstain</b>   | <b>Abstain</b>   |

<sup>84</sup> Mostly reproduced from: Renee Westra, ‘The Coalition, Labor and the Israeli-Palestinian conflict since 2013’, *Parliament of Australia* (online 22 February 2017), <[www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2017/February/The\\_Coalition\\_Labor\\_and\\_the\\_Israeli\\_Palestinian\\_conflict\\_since\\_2013](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2017/February/The_Coalition_Labor_and_the_Israeli_Palestinian_conflict_since_2013)>

<sup>85</sup> *Ibid*

<sup>86</sup> *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, GA Res 70/89, UN Doc A/RES/70/89 (9 December 2015), adopted 15 December 2015.

<sup>87</sup> *The right of the Palestinian people to self-determination*, GA Res 68/154, UN Doc A/RES/68/154 (4 February 2014), adopted 18 December 2013.

<sup>88</sup> *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories*, GA Res 68/81, UN Doc A/RES/68/81 (16 December 2013), adopted 11 December 2013.

<sup>89</sup> *Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources*, GA Res 68/235, UN Doc A/RES/68/235 (7 February 2014), adopted 20 December 2013

|                                     |                  |                  |                  |                  |
|-------------------------------------|------------------|------------------|------------------|------------------|
| 2013/68                             | Abstain          | In favour        | Abstain          | Abstain          |
| <i>Coalition Government elected</i> |                  |                  |                  |                  |
| 2012/67                             | In favour        | In favour        | In favour        | Abstain          |
| 2011/66                             | In favour        | In favour        | In favour        | Abstain          |
| 2010/65                             | In favour        | In favour        | In favour        | Against          |
| 2009/64                             | In favour        | <u>In favour</u> | In favour        | Against          |
| 2008/63                             | <u>In favour</u> | Abstain          | <u>In favour</u> | Against          |
| <i>Labor Government elected</i>     |                  |                  |                  |                  |
| 2007/62                             | Against          | Abstain          | Abstain          | Against          |
| 2006/61                             | Against          | Abstain          | Abstain          | Against          |
| 2005/60                             | Against          | Abstain          | Abstain          | Against          |
| 2004/59                             | Against          | Abstain          | Abstain          | Abstain          |
| 2003/58                             | Abstain          | In favour        | In favour        | Abstain          |
| 2002/57                             | In favour        | In favour        | In favour        | In favour        |
| 2001/56                             | In favour        | In favour        | In favour        | In favour        |
| 2000/55                             | In favour        | In favour        | In favour        | <u>In favour</u> |
| 1999/54                             | In favour        | In favour        | In favour        | Abstain          |
| 1998/53                             | In favour        | In favour        | In favour        | In favour        |
| 1997/52                             | In favour        | In favour        | In favour        | In favour        |
| 1996/51                             | In favour        | In favour        | In favour        | In favour        |
| <i>Coalition Government elected</i> |                  |                  |                  |                  |
| 1995/50                             | In favour        | In favour        | In favour        | In favour        |

Table 2 Australian Voting Pattern at UN General Assembly, 1995-2023.

However, as indicated, more recent Liberal Party prime ministers have strongly supported Israel.<sup>90</sup> During Prime Minister Tony Abbott's administration (2013-2015), his government's representative to the United Nations (UN) withdrew Australia's support for an order to stop "all Israeli settlement activities in all of the occupied territories".<sup>91</sup> At the end of 2014, Australia had abstained from, or voted against, several UN General Assembly resolutions on Israel/Palestine at the United Nations General Assembly 64<sup>th</sup> plenary meeting. For example, Australia voted against Resolution A/69/454, which called for an investigation into Israeli practices affecting the human rights of the Palestinian people,<sup>92</sup> and another resolution that noted Israeli practices affecting the human rights of the Palestinian people

<sup>90</sup> Lily Napach, 'Australia's Evolving Debate on Israel and Palestine', *CSIS* (online, 23 August 2023) <<https://www.csis.org/blogs/new-perspectives-asia/australias-evolving-debate-israel-and-palestine>>.

<sup>91</sup> Jonathan Swan, 'Tony Abbott quietly shifts UN position to support Israeli settlements, upsetting Palestinians', *The Sydney Morning Herald* (online 25 November 2013), <<https://www.smh.com.au/national/tony-abbott-quietly-shifts-un-position-to-support-israeli-settlements-upsetting-palestinians-20131124-2y434.html>>

<sup>92</sup> The Special Political and Decolonization Committee (Fourth Committee), *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, UN GAOR, UN Doc A/69/PV.64 (5 December 2014).

in the Occupied Palestinian Territories, including East Jerusalem”.<sup>93</sup> Then, on 30 December 2014, Australia was one of only two nations to vote against a Jordanian draft resolution designed to hasten a two-state solution to the Israeli-Palestinian dispute at the United Nations Security Council.<sup>94</sup> It called for a settlement on pre-1967 lines, declared East Jerusalem the capital of the Palestinian state within three years, and called for security guarantees for Israel. Australia’s “against” vote was crucial in defeating the long-awaited resolution.

In 2016, (Liberal Party) Prime Minister Malcolm Turnbull’s government called a UN resolution condemning Israel’s settlements program in the West Bank and East Jerusalem a “one-sided [resolution] targeting Israel”.<sup>95</sup> In 2018, despite significant domestic backlash, Turnbull met with Israeli Prime Minister Benjamin Netanyahu in Australia to discuss the two countries’ growing relations.<sup>96</sup> In 2018, Prime Minister Scott Morrison made Australia the third country, following the United States and Guatemala, to recognise West Jerusalem as Israel’s capital.<sup>97</sup> Australia was also one of only six countries that voted against a UN General Assembly Resolution (A/73/L.49) calling for the achievement of a just and lasting peace in the Middle East, specifically relating to Israel/Palestine.<sup>98</sup> In 2019, Morrison called Israel the “beacon of democracy in the Middle East,” and dismissed the observation, made by several respected international and Israeli humanitarian and legal organisations, that Israel was an apartheid state.<sup>99</sup>

Australian government support for Israel has continued and, indeed, increased in more recent years. For example, in 2019, the Australian government, along with Israel and the US, voted against the United Nations resolution to elect Palestine as chair of the Group of 77, which granted it full member state participation rights during 2019.<sup>100</sup> Then, in 2020, Australia was one of the two countries, the other being the Marshall Islands, which opposed UN resolutions condemning Israeli annexation plans for

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<sup>93</sup> Ibid

<sup>94</sup> United Nations, ‘Resolution in Security Council to Impose 12-Month Deadline on Negotiated Solution to Israeli-Palestinian Conflict Unable to Secure Nine Votes Needed for Adoption’, *UN* (online 30 December 2014), <<https://press.un.org/en/2014/sc11722.doc.htm>>

<sup>95</sup> Guardian Staff, ‘Julie Bishop: Australia would not have backed UN resolution on Israel’, *The Guardian* (online 30 December 2016), <<https://www.theguardian.com/australia-news/2016/dec/30/julie-bishop-australia-un-resolution-israel>>

<sup>96</sup> Jacqueline Williams and Gerry Mullany, ‘Israel and Australia Promote Closer Ties in Netanyahu Visit’, *The New York Times* (online 22 February 2017), <<https://www.nytimes.com/2017/02/22/world/australia/israel-benjamin-netanyahu-visit-turnbull.html>>

<sup>97</sup> Associated Press, ‘Australia recognizes west Jerusalem as Israel’s capital, but won’t move embassy — yet’, *NBC News* (online 15 December 2018), <<https://www.nbcnews.com/news/world/australia-recognizes-west-jerusalem-israel-s-capital-won-t-move-n948331>>

<sup>98</sup> United Nations, ‘General Assembly Adopts Text Reiterating Call for Comprehensive Middle East Peace, after Failing to Pass Resolution Condemning Actions by Hamas in Gaza’, *UN* (online 6 December 2018), <<https://press.un.org/en/2018/ga12101.doc.htm>>

<sup>99</sup> Henry Benjamin, ‘Australian leaders praise Israel in parliament as they mark 70 years of ties’, *The Times of Israel* (online 20 February 2019), <<https://www.timesofisrael.com/australian-leaders-praise-israel-in-parliament-as-they-mark-70-years-of-ties/>>

<sup>100</sup> Noura Mansour, ‘Australia and Palestine-Israel: The Threat of the Far Right’, *Al Shabaka* (online 28 October 2018), <<https://al-shabaka.org/memos/australia-and-palestine-israel-the-threat-of-the-far-right/>>

parts of the West Bank.<sup>101</sup> In the three years that Australia was a member of the United Nations Human Rights Council, between 2018-2020, it voted against all 13 resolutions relevant to violations of Palestinian human rights, including at the 28th special session, which established an independent fact-finding mission to investigate Israel's violations of international humanitarian law and international human rights law in the context of popular civilian protests in the Occupied Palestinian Territories. Australia voted against five Human Rights Council resolutions for Palestinian self-determination (A/HRC/43/L.39),<sup>102</sup> against Israeli settlements and settler violence (A/HRC/43/L.37/Rev.1),<sup>103</sup> and on Israeli human-rights abuses in the Palestinian Territories (A/HRC/43/L.38/Rev.1).<sup>104</sup> In 2021, following a decision of the ICC that accepted it has jurisdiction to investigate and prosecute crimes in the Occupied Palestinian Territories, Australia's Foreign Minister issued a statement telling the Court it should not exercise jurisdiction.<sup>105</sup> Finally, on 30 December 2022, the United Nations General Assembly adopted a Resolution (A/RES/77/247) that called on the ICJ to give an opinion on the legal consequences of Israel's illegal occupation of Palestinian Territories.<sup>106</sup> Australia was in the distinct minority who voted against it, which prompted Human Rights Watch to appeal to Australia to 'stop blocking international justice'.<sup>107</sup>

## Factual Allegations

Australia has continued its crucial political and material support for Israel as it has committed genocide against Palestinians in Gaza since 7 October 2023.

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<sup>101</sup> Ben Saul, 'Why Australia needs to join global condemnation of Israel's annexation plans', *The Sydney Morning Herald* (online 25 June 2020), <<https://www.smh.com.au/world/middle-east/why-australia-needs-to-join-global-condemnation-of-israel-s-annexation-plans-20200624-p555pr.html>>

<sup>102</sup> Human Rights Council, *Right of the Palestinian people to self-determination*, 43<sup>rd</sup> sess, UN Doc A/HR/43/L.39 (3 April 2020).

<sup>103</sup> Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, 43<sup>rd</sup> sess, UN Doc A/HR/43/L.37/Rev. 1 (17 June 2020).

<sup>104</sup> Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, 43<sup>rd</sup> sess, UN Doc A/HR/43/L.38/Rev. 1 (17 June 2020).

<sup>105</sup> Marise Payne, 'ICC Pre-Trial Chamber decision on jurisdiction in relation to the 'Situation in Palestine'', *Ministry for Foreign Affairs* (online 6 February 2021), <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/icc-pre-trial-chamber-decision-jurisdiction-relation-situation-palestine>>

<sup>106</sup> Al Jazeera Staff, 'UN seeks ICJ opinion on Israel's illegal occupation of Palestine', *Al Jazeera* (online 31 December 2022), <<https://www.aljazeera.com/news/2022/12/31/un-seeks-icj-opinion-on-israels-illegal-occupation-of-palestine>>.

<sup>107</sup> Sophie McNeill, 'Australia Should Stop Blocking International Justice in Israel and Palestine', *Human Rights Watch* (online 11 February 2021), <<https://www.hrw.org/news/2021/02/12/australia-should-stop-blocking-international-justice-israel-and-palestine>>.

## **Australian Political Support for Israel’s Attack on Palestinians in Gaza**

Senior Australian politicians have, in their official and personal capacities, rhetorically and politically supported the Israeli government, as the latter has plainly expressed genocidal intent through the public comments and speeches of Israeli officials at the highest levels of its political and military apparatuses and subsequent genocidal actions against Palestinians in Gaza.

A chronological juxtaposition of rhetorical, genocidal intent by Israeli officials with supporting statements of Australian Government Ministers is provided in **ANNEXURE A - ‘Israeli statements and actions and Australian Minister replies’**, which accounts for the time period between 7 October – 31 October 2023. Below are selected statements by prominent members of the Australian Parliament that demonstrate their support for Israel’s *prima facie* genocidal attacks on Gaza, with the specific alleged offences highlighted in the next section.

### **Australian Prime Minister Anthony Albanese**

Prime Minister Anthony Albanese has stated:

8 October 2023

“Israel has a **right to defend itself**, which is what it is doing.”<sup>108</sup> (emphasis added)

[When asked: Are you worried about escalation here? Would you be urging any restraint?]

“Well, of course people are worried about escalation, but **Israel has a right to defend itself** and it will be doing so.”<sup>109</sup>

9 October 2023

“We’ve **provided political support for Israel**, which is what the request has been at this time.”<sup>110</sup>

[When asked: if asked will we send aid or military equipment to Israel?:] “...**I didn’t have to be asked to express political support at this time. I just did it out of gut instinct. ....**”<sup>111</sup>

“As you would expect, Israel has a right to defend itself. But you will see, you’ve already seen horrific numbers, so more than six hundred Israelis killed in the initial action by Hamas and

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<sup>108</sup> See, for example, Television Interview – ABC Insiders, Prime Minister of Australia (8 October 2023), <<https://www.pm.gov.au/media/television-interview-abc-insiders>>.

<sup>109</sup> Ibid.

<sup>110</sup> See, for example, Television Interview – Today, Prime Minister of Australia (9 October 2023), <<https://www.pm.gov.au/media/television-interview-today-1>>.

<sup>111</sup> Radio interview - 2GB Sydney, Prime Minister of Australia (9 October 2023), <<https://www.pm.gov.au/media/radio-interview-2gb-sydney>>

hundreds of people killed in Gaza as well. This is of real concern, **but Hamas bear the responsibility for this.**" [emphasis added]<sup>112</sup>

10 October 2023

[When asked, it hasn't got to this point yet, Prime Minister, but if Israel wanted some kind, you know, coalition of likeminded nations to play some sort of military role, be it a symbolic one or something more substantial, would Australia line up behind something like that?:] **"Well, there's no suggestion that that is what's envisaged. What Israel is not asking for, but what they're receiving without having to ask, because they shouldn't have to, is the political support of the world to call this out,** this atrocity for what it was. And that is what we did. And that's what other democratic Western nations, of course, have done."<sup>113</sup>

11 October 2023

**"What is happening now rests firmly with Hamas** and the actions that they have taken."<sup>114</sup>

#### **Deputy Australian Prime Minister and Minister for Defence Richard Marles**

Deputy Prime Minister and Minister for Defence Richard Marles has stated:

10 October 2023

[When asked: the Israeli Defence Minister has ordered the complete siege of Gaza, the cutting off of food, fuel and electricity. Do you think this is justified?] **"Well, I think Israel is justified in acting to defend itself in this moment. I think it's justified in seeking to protect and liberate its citizens and to act against Hamas.** I mean, this is an incident which is being wrought upon innocent civilians and it is an act of terrorism. **And in this moment, that Israel is acting in a way which is seeking to defend itself, I think we can understand.**"<sup>115</sup>

[When asked: but does that right to defend itself extend to collective punishment? How far does that right go?] "I'm not— we are not sitting in the chair of the Israeli Defence Minister now. **And so, the particular judgments as to how this is pursued is really a matter that Israel is executing as we speak.** But we can't take our eye away from the fact that what we've seen here

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<sup>112</sup> Television interview - ABC Breakfast, Prime Minister of Australia (9 October 2023), <<https://www.pm.gov.au/media/television-interview-abc-breakfast>>.

<sup>113</sup> Radio interview - FiveAA Adelaide, Prime Minister of Australia (10 October 2023), <<https://www.pm.gov.au/media/radio-interview-fiveaa-adelaide>>

<sup>114</sup> Madeleine Wedesweiler, 'Anthony Albanese says Labor united on Hamas-Israel war, defends not visiting Tel Aviv', *SBS* (online 20 October 2023), <<https://www.sbs.com.au/news/article/anthony-albanese-says-labor-united-on-hamas-israel-war-defends-not-visiting-tel-aviv/ypcx2saa5>>

<sup>115</sup> Radio Interview, ABC Perth Drive, Minister for Defence (10 October 2023), <<https://www.minister.defence.gov.au/transcripts/2023-10-10/radio-interview-abc-perth-drive>>



is an act of terrorism wrought upon innocent people, which, at this point, has seen the loss of more than 900 lives. This is a tragic incident and, in that event, Israel does have a right to defend itself.”<sup>116</sup>

[When asked: At that event last night, Senator Paterson, the Shadow Home Affairs Minister, said that even if global support wavers, Australia's support for Israel would not. I'm quoting him now, “Israel cannot live any longer with the existential risk of an event like this happening again. The response must be decisive and when that response comes, we will stand with you through what needs to be done because we are not fair-weather friends.” Do you support that sentiment? And I just go back to the point, and I accept what you're saying, that this is unacceptable terrorism, and we stand with Israel, in your words. But at what point do you urge restraint? At what point is standing with Israel no longer palatable to the Australian government? Or is there no point?] “Well, last night I made clear, as I make clear now, that Israel has a right to exist in peace and with security. And I might say, the Palestinian people have a right to exist with peace and security as well. But Israel has a right to live and to exist with peace and security. What we saw was that peace and security shattered over the course of the weekend. And last night I made clear, and again, make it clear now, we absolutely understand that Israel has a right to defend itself. It has a right to protect and to liberate its citizens, particularly referring to those who've been taken hostage, and it has a right to act against Hamas. Now, they are the rights that belong to Israel in this moment, given what has occurred over the course of the weekend. **And in that, we absolutely respect that. And as I say, we stand in solidarity with Israel and its people.**”<sup>117</sup>

[When asked: Is cutting off power to the Gaza Strip, which Israel has done, should that be considered a war crime?] “**Right now, our focus is on showing solidarity with the people of Israel in the face of this terrorist attack. We acknowledge Israel's right to defend itself and we very much acknowledge Israel's right to seek the protection, and indeed the liberation of citizens and to act against Hamas.**”<sup>118</sup>

[When asked if Australia supports Israel attacking Gaza:] “We absolutely support Israel's right to move on Hamas and we've made that really clear. I mean, Israel's in a position right now where they need both to protect their own citizens, but to liberate them. I mean, they are facing the appalling situation where they have a significant number of their citizens being held hostage

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<sup>116</sup> Ibid

<sup>117</sup> Radio interview, ABC Melbourne Drive, Minister for Defence (10 October 2023), <<https://www.minister.defence.gov.au/transcripts/2023-10-10/radio-interview-abc-melbourne-drive>>

<sup>118</sup> Press conference, Perth WA, Minister for Defence (10 October 2023), <<https://www.minister.defence.gov.au/transcripts/2023-10-10/press-conference-perth-wa>>

in the Gaza Strip as we speak. **So, of course Israel has a right to act, and we've been making that clear from the get go.**"<sup>119</sup>

#### 15 October 2023

[When asked, do you think Israel has a right now to do what it's done in cutting off fuel, food, and water supplies to the civilians in Gaza?] "Well Israel does have a right to defend itself and in doing that Israel does have a right to act against Hamas. I mean what we saw last weekend was an act of terror and an act of terror that was wrought upon innocent people and in that sense, you know what we witnessed last weekend was murder and it's an absolute tragedy what is now playing out. It is a tragedy for the innocent Israelis who have been a victim of this, but it is obviously a tragedy for innocent Palestinians who now find themselves in the middle of this as well. We join the call of other nations in saying to Israel that in having a right to defend itself, obviously it needs to do that in a way that acts in accordance with the rules of law [sic] and **that's very clear and indeed Israel have made comments that that is how they will proceed.**" [When pressed: Are they doing that right now? Acting within the rules of war?] "**Well, I'm not about to cast a judgment on what they are doing now and that's the way I would answer that question-**" [When the journalist interjects and asks: I'm puzzled by that, you can't say that Israel is acting within the rules of war right now?] "**I'm saying that I think Israel is acting within the rules of war, I'm not casting a negative judgment on what they're doing** but I guess I'm making this point, I'm not sitting in their control room either I do not have all the information that is available to me that they will have to them but it is very important that as Israel walks forward, while having the right to defend itself and that means acting against Hamas, they do act within the rules of war."<sup>120</sup>

#### 17 October 2023

[When asked, the Greens leader, Adam Bandt, moved an amendment to accuse Israel of war crimes. Were you disturbed by that move yesterday?]: **We obviously voted against that, and yes, I think it really couldn't miss this moment more.** I mean, what we are seeing is a country in Israel which does have a right to defend itself. In light of what occurred the weekend before last... And really the position that the Greens took yesterday was completely despicable.<sup>121</sup>

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<sup>119</sup> Radio Interview with Neil Mitchell, 3AW Mornings, Minister for Defence (11 October 2023),

<<https://www.minister.defence.gov.au/transcripts/2023-10-11/radio-interview-neil-mitchell-3aw-mornings>>

<sup>120</sup> ABC, 'Insiders Special Edition: Voice referendum & Israel-Gaza conflict', *ABC* (online 15 October 2023), <<https://www.youtube.com/watch?v=MHJYgDI8EjU>>

<sup>121</sup> Radio Interview, The Ben Fordham Breakfast Show, Minister for Defence (17 October 2023),

<<https://www.minister.defence.gov.au/transcripts/2023-10-17/radio-interview-ben-fordham-breakfast-show>>.

## Australian Minister for Foreign Affairs Penny Wong

Minister for Foreign Affairs, Penny Wong has stated:

10 October 2023

[When asked: Does that right to defend itself extend to what looks like collective punishment?"] “Well, I think it's always very difficult from over here to make judgments about what security approach other countries take. **We've said Israel has a right to defend itself.**”<sup>122</sup>

[When asked about whether military support would be provided to Israel:] “**We have offered political solidarity, our continued support and we are reaching out and engaging with other parties in the region.**”<sup>123</sup>

[When asked: the Israeli Defence Minister has ordered the complete siege of Gaza, the cutting off of food, fuel and electricity. Do you think that level of response is justified?] “**Well, Israel has a right to defend itself and this was an abhorrent attack.** And the taking of hostages, the attacks on civilians, the sorts of images, awful images that we are seeing, reminds us of the security situation that Israel confronts. This is really a dreadful situation, a devastating loss of life. And I think we should all be very clear that these attacks are abhorrent. And Australia does very clearly, as I said to the Foreign Minister, Israeli Foreign Minister, when I spoke to him, **we do stand in solidarity with Israel, and we recognise and support its right to defend itself.**”

[When asked: Does that right to defend itself extend to what looks like collective punishment?] “Well, I think it's always very difficult from over here to make judgments about what security approach other countries take. **We've said Israel has a right to defend itself.** We call for all hostages to be released. But we also have a principled position which we would advocate to all nations and all groups in all situations, which is we would urge for the protection of civilian lives and restraint, which ensures, **as far as possible,** that that occurs”.<sup>124</sup>

[When asked: But did you say that Israel should exercise restraint?] “**No, no, I said that I think the tweet said something like, we call for restraint and the protection of civilian lives.** And I think that's **an unremarkable point, frankly. But look,** this is, **and I want to respond to some of what we've seen overnight, and this has been an abhorrent attack. I know that the images have been terrifying. We know that we've seen hundreds of Israelis killed or more. We've seen hostages taken and civilians targeted.** So, Australia calls for hostages to

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<sup>122</sup> ABC Radio National with Patricia Karvelas, Minister for Foreign Affairs (10 October 2023), <<https://www.foreignminister.gov.au/minister/penny-wong/transcript/abc-radio-national-patricia-karvelas>>

<sup>123</sup> Ibid.

<sup>124</sup> Ibid

be returned. We condemn Hamas' abhorrent attacks, and **we stand with Israel and we recognise its right to defend itself.**"<sup>125</sup>

11 October 2023

"We remain as **steadfast and unwavering** as ever in our support for Israel."<sup>126</sup>

15 October 2023

[When asked: You've talked about opening up supply channels into Gaza. Do you think that Israel's gone beyond self-defence in cutting off food, water energy supplies?] "Well, look, I think that we should articulate the principled position about observation of international humanitarian law. We also understand Israel has been subjected to an attack. As others have said, it's not a war that they sought, they were attacked, a heinous attack by Hamas, and Israel's right to defend itself and secure its borders is legitimate. But like the US President, I would also urge for the observation of international humanitarian law, because whether - civilians on all sides are being harmed, and that is a very distressing situation." [When pressed: Some of those protesters are saying the Australian government shouldn't give Israel a blank cheque. What do you say to that?] "I think I'd refer you to my comments, which I think are principled and clear about the position Australia takes."<sup>127</sup>

16 October 2023

**"Australia stands with Israel, and always will."**<sup>128</sup>

### **Australian Minister for Home Affairs Clare O'Neil**

Minister for Home Affairs, Clare O'Neil has stated:

12 October 2023

"I think what has happened here is just so brutal in its act of violence, the killing of innocent men, women and children, and it's important for Australians to also understand that Hamas, the

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<sup>125</sup> Transcript of interview with Stacey Lee and Nikolai Beilharz, Minister for Foreign Affairs (10 October 2023),

<<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F9412670%22;src1=sm1>>

<sup>126</sup> Remarks to the Australia-Israel Chamber of Commerce, Minister for Foreign Affairs (11 October 2023),

<<https://www.foreignminister.gov.au/minister/penny-wong/speech/remarks-australia-israel-chamber-commerce>>

<sup>127</sup> Doorstop, Adelaide, Minister for Foreign Affairs (15 October 2023),

<<https://www.foreignminister.gov.au/minister/penny-wong/transcript/doorstop-adelaide>>

<sup>128</sup> Speech to the Senate - Hamas attacks on Israel - Senate motion, Parliament House, Minister for Foreign Affairs (16 October 2023), <<https://www.foreignminister.gov.au/minister/penny-wong/speech/speech-senate-hamas-attacks-israel-senate-motion-parliament-house>>

perpetrators of this violence, a listed terrorist organisation by the Australian government, have also committed a crime against the Palestinian people, because many innocent people will die on the other side of this conflict, and all of this is violence begetting more violence. No one will win from this situation.”<sup>129</sup>

“There is no question that Palestinians will be affected by the actions here, and I say again Hamas have committed a disgraceful atrocity against the Israeli people. **This atrocity will cause violence against Palestinians.**”<sup>130</sup>

### **Australian Minister for Government Services Bill Shorten**

Minister for Government Services, Bill Shorten has stated:

19 October 2023

[When asked: two Teals joined forces with the Greens to oppose a Parliament motion supporting Israel. Wow. ...How does all that sit with you?] “I think that some in the Greens political party are out of step with the Australian people or at least the mainstream. **Israel does have a right to defend itself.** Remember what's triggered this latest incredible round of instability and violence, it was thousands of Hamas terrorists crossing the border, kidnapping, murdering, killing. And I don't understand why some people seem to always struggle with the idea that Israel has a right to exist behind safe borders.”<sup>131</sup>

### **Leader of the Opposition Peter Dutton**

Leader of the Opposition, Peter Dutton, has stated:

9 October 2023

“When people talk about Israel having to **show restraint, it's completely and utterly the wrong time for that sort of language...** I think it's important for us to speak in a bipartisan way, but **the Coalition won't be using any language about restraint from the Israeli people at the moment**”.

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<sup>129</sup> Interview with Lisa Millar, Minister for Home Affairs (12 October 2023), <<https://minister.homeaffairs.gov.au/ClareONeil/Pages/interview-with-lisa-millar-12102023.aspx>>

<sup>130</sup> Ibid

<sup>131</sup> Minister Shorten interview on the Today Show with Karl Stefanovic, Minister for the Department of Social Services (19 October 2023), <https://ministers.dss.gov.au/transcripts/12821>.

“The **Australian Government should stand ready to provide munitions or equipment or defence material otherwise if it’s requested by Israel**. We should make it known to Israel that the Australian Government is prepared to provide such support if it’s requested. We should be one of the allied nations... and I’ve said today that **Australia should provide whatever support Israel requests** and it should be made known to Israel by the Prime Minister that Australia is prepared to provide munitions and support, otherwise, as the Americans and others no doubt have”.<sup>132</sup>

#### 10 October 2023

“I think we should make it clear to Israel, that, if requested, **Australia can provide munitions or other support, specialist support**, if that’s going to provide support to the resolution of what is obviously a horrible situation”.<sup>133</sup>

#### 16 October 2023

“It’s remarkable that this attack on the 7th of October was just a total act of sheer barbarity. The images, the shocking betrayal, the interpretation of what took place means that no longer can the sympathisers of these murderous terrorists call them ‘freedom fighters’. No longer can the **apologists of this death cult** claim they have a just and noble cause. What occurred nine days ago was the embodiment of evil”.<sup>134</sup>

“Israel has every right to exist. **Israel has every right to defend itself and its people**. Israel has every right to deter future attacks and other acts of aggression, of coercion and of interference. **And the Coalition supports – and proudly supports – Israel’s right to do what is necessary and needed in the circumstances with every asset available to safeguard its sovereignty, to bolster its borders, to protect its people, and to thwart threats it now faces** – the existential threats. **There must be no restraint shown** to those who showed no restraint themselves in committing these vicious and vile acts of terrorism”.<sup>135</sup>

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<sup>132</sup> Peter Dutton, ‘Leader of the Opposition – transcript – Joint doorstep interview, Elliot’ (media release, 9 October 2023) <<https://www.peterdutton.com.au/leader-of-the-opposition-transcript-joint-doorstop-interview-elliott/>>.

<sup>133</sup> Peter Dutton, ‘Leader of the Opposition – transcript – Interview with Tom Elliott’ (media release, 10 October 2023) <<https://www.peterdutton.com.au/leader-of-the-opposition-transcript-interview-with-tom-elliott-3aw/>>.

<sup>134</sup> Peter Dutton, ‘Leader of the Opposition – transcript – Statement on Israel, Parliament House’ (media release, 16 October 2023) 3-6 <<https://www.peterdutton.com.au/leader-of-the-opposition-transcript-statement-on-israel-parliament-house/>>.

<sup>135</sup> Ibid.

“People who are non-citizens, here in our country, on visas, and who are engaged in vile anti-Semitic behaviour – who are inciting violence, or who choose violence – should have their visas cancelled and be promptly deported from our country”.<sup>136</sup>

“With Israel undertaking military operations in Gaza in response to Hamas’ acts of terrorism, there have been – **and will continue to be – civilian casualties, tragically, on the Palestinian side**, and Hamas knows that. They knew that there would be retaliation for these grotesque acts of terrorism. They knew that the Israelis would respond, and they knew through their actions that it would result directly in the loss of the lives of people on the Gaza Strip, and elsewhere.... If we’re looking for an equivalence to Hamas – to their culture, to their conduct – look no further than ISIS”.<sup>137</sup>

22 November 2023

“We stand here today in the wake of the barbarity visited upon Israel on the 7<sup>th</sup> of October. We stand here today having been filled, through our television screens, of **the hate-fuelled mobs** marching through major democratic cities **calling for the slaughter of Jews**. We stand here today in the aftermath of obscene and unfathomable acts of anti-Semitism on our own soil”.<sup>138</sup>

Australia has also expressed crucial support for Israel’s ongoing attack on Palestinians in Gaza within the Australian Senate, the upper house of the bicameral Parliament of Australia.

On 18 October 2023, Senator Steele-John urgently moved a motion that the Senate oppose Israel’s invasion of Gaza. The motion was defeated with 11 Ayes and 41 Noes, which meant that the Senate refused to oppose Israel’s invasion of Gaza.<sup>139</sup> On 7 November 2023, Senator Steele-John moved an urgent motion to support peace for Palestinians and Israelis, while demanding the Australian government call for an immediate ceasefire to end the humanitarian catastrophe occurring in Gaza, for the unconditional release of all hostages, and for an urgent end to the siege on Gaza. With 13 Ayes and 39 Noes, the Senate refused to call for a ceasefire, for the unconditional release of all hostages, and for an urgent end to the siege on Gaza.<sup>140</sup>

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<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Peter Dutton, ‘Leader of the Opposition – transcript – address at the grand opening of the Melbourne Holocaust Museum, Elsternwick’ (Media Release, 22 November 2023) 15-17  
<<https://www.peterdutton.com.au/leader-of-the-opposition-transcript-address-at-the-grand-opening-of-the-melbourne-holocaust-museum-elsternwick/>>.

<sup>139</sup> 2125 *Senate Journal* 75 (2023, Senate)

[https://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/1e0898ac-879f-4b5b-9105-7093f2aa6f72/toc\\_pdf/sen-jn.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/1e0898ac-879f-4b5b-9105-7093f2aa6f72/toc_pdf/sen-jn.pdf;fileType=application%2Fpdf), p. 2147

<sup>140</sup> 2231 *Senate Journal* 78 (2023, Senate)

[https://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/11843069-cdfe-479a-9135-72497c9b2fa7/toc\\_pdf/sen-jn.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/11843069-cdfe-479a-9135-72497c9b2fa7/toc_pdf/sen-jn.pdf;fileType=application%2Fpdf), p. 2242

Australia has also provided political support for Israel’s genocidal attack on Palestinians in Gaza on the international stage. Prominently, on the 27 October 2023, Australia abstained from the United Nations General Assembly Resolution ES-10/21,<sup>141</sup> which called for a sustained humanitarian truce in Gaza.<sup>142</sup>

### **Australian Material Support for Israel’s Attack on Palestinians in Gaza**

Australia has provided several types of material support to Israel during the latter’s attack on Palestinians in Gaza.

Since 2017, Australia has approved 322 defence exports to Israel, including 49 permits for Israel-bound exports in 2022 and 23 in the first three months of 2023, which may cover both military-specific goods and also dual-use devices.<sup>143</sup> The Australian government has not been forthcoming or transparent as to what precisely it has sent to Israeli forces, a situation which has forced human rights groups to launch legal challenges to discover the precise types of military material sent to Israel.<sup>144</sup> It is possible that some items are being used by the IDF in current operations in Gaza, including in the course of the *prima facie* commission of genocide and crimes against humanity.<sup>145</sup> This Communiqué specifically requests the OTP to investigate this matter.

Further, Australia is a member in the Lockheed-Martin F-35 Joint Strike Fighter global supply program and part of the global supply chain. Israel is stockpiling spare parts from the global supply chain to which Australia contributes, for its F-35 ‘Adir’ fighter out of a central distribution hub in Europe. The use of the F-35s in attacks on Gaza was confirmed by the IDF’s Chief of Staff Lt. Gen. Herzl Halevi on 7 November 2023, on a visit to the Israeli Air Force’s F-35 at Nevatim Air Base. No bombs could be dropped on Gaza by an F-35 without parts manufactured for the F-35s by Melbourne company, Rosebank Engineering (RUAG Australia). Heat Treatment Australia (HTA), another Melbourne-based company, has similarly ‘provided support and services to...the global project’ of the F-35 supply

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<sup>141</sup> Jordyn Beazley, ‘Australia abstains from UN resolution calling for truce in Gaza, prompting criticism at home’, *The Guardian* (online, 28 October 2023), <<https://www.theguardian.com/world/2023/oct/28/australia-abstains-from-un-resolution-calling-for-truce-in-gaza-prompting-criticism-at-home>>

<sup>142</sup> *Protection of civilians and upholding legal and humanitarian obligations*, GA Res ES-10/21, UN Doc A/RES/ES-10/21 (30 October 2023), adopted 27 October 2023.

<sup>143</sup> Daniel Hurst, ‘Australia approved 322 defence exports to Israel in six years as Greens fear equipment used in Gaza assault’, *The Guardian* (online 25 October 2023), <<https://www.theguardian.com/world/2023/oct/24/australia-approved-322-defence-exports-to-israel-in-six-years-as-greens-fear-equipment-used-in-gaza-assault>>

<sup>144</sup> Sarah Basford Canales, ‘Legal action attempts to force Australia to reveal if arms exports are supporting Israel assault on Gaza’, *The Guardian* (online 6 November 2023), <<https://www.theguardian.com/australia-news/2023/nov/06/legal-action-attempts-to-force-australia-to-reveal-if-arms-exports-are-supporting-israel-assault-on-gaza>>

<sup>145</sup> Suzanne Varrall, ‘An Opaque Defence Export Regime Risks Global Reputation on Arms Control’, *Australia Institute of International Affairs* (online 14 November 2023), <<https://www.internationalaffairs.org.au/australianoutlook/an-opaque-defence-export-regime-risks-global-reputation-on-arms-control/>>



program,<sup>146</sup> whose efforts the Australian Department of Defence has called ‘vital to the Australian supply chain for the F-35 Joint Strike Fighter’.<sup>147</sup> HTA is a small, but crucial factory in Melbourne that supports the global supply chain of F-35 fighter jets that are key in bombing Gaza.<sup>148</sup> A Brisbane company, Ferra Engineering, also manufactures ‘weapons adaptors’, the mechanisms that hold and release the bombs carried by the F-35, being dropped on civilians in Gaza.<sup>149</sup> BAE Systems Australia similarly ‘play a major role in the global F-35 sustainment program through an Asia–Pacific warehouse’.<sup>150</sup> Finally, the Albanese government has permitted the sub-contracting of Israeli supplier Elbit to construct turrets for the Australian Infantry Fighting Vehicle project,<sup>151</sup> which represents a significant boon to the Elbit weapons manufacturer. Elbit is equally implicated in supplying the IDF for its attacks on Gaza.<sup>152</sup> More recently, the Australian government awarded Elbit a \$917 million contract, which it has confirmed is to provide “advanced protection, fighting capabilities and sensors” for new Infantry Fighting Vehicles (IFVs) being constructed in the Victorian electorate of Defence Minister Richard Marles, a named individual in this Communiqué.<sup>153</sup> This contract equally enhances the ability of Elbit to supply weapons to the IDF.

Relevantly, The Hague Court of Appeal ruled on 12 February 2024 that the Dutch government must cease supplying parts of F-35 fighter jets to Israel in view of if its international obligations pursuant to the Arms Trade Treaty (as well as EU-related obligations).<sup>154</sup> The Court concluded that there were many indications that Israel had violated the humanitarian law of war in a ‘not insignificant number of cases’, with serious risks that Dutch manufactured F-35 parts will be used by Israel for further violations of international humanitarian law. Because of the Dutch’s government ratification of the Arms Trade

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<sup>146</sup> Stephen Kuper, ‘F-35 countdown: Providing SMEs with a pathway to global expansion’, *Defence Connect* (online 26 November 2018), <<https://www.defenceconnect.com.au/strike-air-combat/3204-f-35-countdown-providing-smes-with-a-pathway-to-global-expansion>>.

<sup>147</sup> Department of Defense, ‘HTA Aerospace and Defense integral to F-35 supply chain’, *Australian government* (online 24 July 2020), <<https://www.defence.gov.au/business-industry/case-studies/hta-aerospace-and-defense-integral-f-35-supply-chain>>.

<sup>148</sup> Jerome Small, ‘Protest to target Melbourne weapons manufacturer’, *RedFlag* (online 30 January 2024), <<https://redflag.org.au/article/protest-target-melbourne-weapons-manufacturer>>.

<sup>149</sup> Kellie Tranter, ‘Australia’s Role in the Bombing of Gaza’, *Declassified Australia* (online 17 November 2023), <<https://declassifiedaus.org/2023/11/17/australias-role-in-the-bombing-of-gaza/>>

<sup>150</sup> See <https://www.baesystems.com/en-aus/what-we-do/f-35>.

<sup>151</sup> Andrew Greene, ‘Australia ‘going slow’ on processing military export requests from Israel over Gaza war concerns’, *ABC News* (online 1 February 2024), <<https://www.abc.net.au/news/2024-02-01/australia-stalls-military-export-requests-israel-gaza/103410528>>.

<sup>152</sup> Elbit provides ‘up to 85 percent of the land-based equipment procured by the Israeli military and about 85 percent of its drones’, see Paddy Dowling, ‘Dirty secret of Israel’s weapons exports: They’re tested on Palestinians’, *Al Jazeera* (online 17 November 2023), <<https://www.aljazeera.com/features/2023/11/17/israels-weapons-industry-is-the-gaza-war-its-latest-test-lab>>. And also, American Friends Service Committee, ‘The Companies Profiting from Israel’s 2023-2024 Attacks on Gaza’, *American Friends Service Committee* (online), <<https://afsc.org/companies-2023-attack-gaza>>.

<sup>153</sup> Andrew Greene, ‘Controversial Israeli weapons company awarded \$917 million Australian army contract’, *ABC News* (online, 28 February 2024), <<https://www.abc.net.au/news/2024-02-28/israeli-weapons-company-awarded-australian-army-contract/103519558>>.

<sup>154</sup> *Oxfam, PAX Netherlands and The Rights Forum Foundation v. The State of Netherlands*, Case No. 200.336.130/01, Hague Court of Appeal.

Treaty (and obligations under the Common Position of the European Council), The Hague Court of Appeal found that the government was acting illegally by not intervening in the export and transit of F-35 parts to Israel. Relevantly to this Communiqué, Australia has also ratified the Arms Trade Treaty and as explained above, provides F-35 parts in the global supply program to Israel and supplies and maintains its F-35 aircraft, which have taken a lead role in the genocidal actions by Israel against Palestinians in Gaza.

Other material support provided by Australia includes a dispatch of a “significant contingent” of troops and two aircraft to the Middle East amid the ongoing Israeli attack on Gaza. Australia’s Defence Minister, Richard Marles, said that Australia is deploying additional Australian Defence Force personnel and two aircraft to the Middle East region as part of “Operation Beech”. Marles stated that the deployment is a “precautionary measure to support the whole of Australian Government contingency options due to the risk of the security situation deteriorating further”. However, the Minister has not revealed where the contingent will be based in the region nor its exact role.<sup>155</sup> Australian Army personnel from Townsville and Brisbane, and two Royal Australian Air Force C-130J aircraft and a C-17A Globemaster heavy transport aircraft are in the region ready to support, though again, it is ambiguous as to what that support entails.<sup>156</sup>

Further, Australians have been permitted by the Federal Government, whether explicitly or implicitly, to travel to Israel to join the IDF and its attacks on Gaza. A senior Israeli official confirmed that some Australian residents with specialised skills and training were among the 360,000 reservists who have been called up to fight since Israel began attacking the Gaza Strip. It is unconfirmed exactly how many reservists have left Australia to fight in the ranks of the IDF, but there have been unmitigated departures of Australian citizens to this end.<sup>157</sup> This stands in sharp contrast to the sanctions regime imposed by the Australian government in relation to Russia. That regime includes provisions enabling the Australian government to apply travel bans to persons that the Minister for Foreign Affairs believes may threaten Ukraine.<sup>158</sup>

During the Premiership of Prime Minister Albanese, Australia also appears to have provided not insignificant intelligence assistance to Israel. The US-run Pine Gap surveillance base, located outside of Alice Springs in Australia’s Northern Territory, collects an enormous range of communications and

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<sup>155</sup> Riyaz ul Khaliq, ‘Amid Israel’s war on Gaza, Australia dispatching troops, aircraft to Middle East’, *Anadolu Ajansi* (online 26 October 2023), <<https://www.aa.com.tr/en/asia-pacific/amid-israel-s-war-on-gaza-australia-dispatching-troops-aircraft-to-middle-east/3033495>>

<sup>156</sup> See <https://www.defence.gov.au/operations/operation-beech>

<sup>157</sup> Matthew Knott, James Massola and Lucy Cormack, ‘Australians fly to Israel to join war as Palestinians urged to flee to southern Gaza’, *The Sydney Morning Herald* (online 13 October 2023), <<https://www.smh.com.au/world/middle-east/australians-fly-to-israel-to-join-war-as-palestinians-urged-to-flee-to-southern-gaza-20231013-p5ec5b.html>>.

<sup>158</sup> See <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime>.

electronic intelligence from the Gaza-Israel battlefield – data which is then provided to the IDF and which may aid its campaign in Gaza.<sup>159</sup> Surveillance is carried out on civilian, commercial and military communications.<sup>160</sup> Pine Gap is a joint defence facility operated by both the US and Australia.

Moreover, Australia has supported Israel's genocidal intentions in the Gaza Strip by suspending key humanitarian support to the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"), which supports Palestinians across the Occupied Territories. On 26 January 2024, the same day that the ICJ acknowledged the plausibility of the allegation that Israel is committing genocide against Palestinians in Gaza, Israel raised unverified allegations against UNRWA staff, accusing twelve (12) staff members of being involved in the Hamas-led attacks on 7 October 2023. According to domestic Israeli news outlets, these claims were in large part based on confessions extracted from the interrogation of militants captured on 7 October 2023. As stated by the Lemkin Institute for Genocide Prevention, whether or not it is true that the 'allegations were based on "confessions," it is important to note that Israel routinely tortures Palestinian captives, a method that has been shown to produce unreliable and false intelligence',<sup>161</sup> as well as being a serious breach of international human rights law. Despite the unreliable sources and methods of extracting this dubious and unverified information,<sup>162</sup> UNRWA immediately dismissed the implicated staff, and the United Nations initiated an independent inquiry into the allegations. It is important to note that Israel has spearheaded a prolonged campaign to close down UNRWA. Israel has been motivated in its campaign by UNRWA's mandate: the implementation of UN General Assembly Resolution 194 (III), which resolves to return Palestinians to their homes who were displaced during the 1947-1949 Palestine war, where Zionist forces loyal to what would become Israel conquered Palestinian territory and expelled Palestinians. Israel has long denied this right of return of the Palestinian people, which is at the centre of its hostility towards UNRWA. Notably, 'the denial of the return of the Palestinian people, deliberately and permanently fragments the Palestinian people as a group, and coupled with Israeli statements and plans to destroy Palestinians as a group, including its plan to dismantle UNRWA to deny Palestinian refugees their right of return, may in itself amount to a genocidal act'.<sup>163</sup>

However, as soon as Israel made these unfounded allegations against UNRWA staff, at least sixteen donor countries quickly cut funding to the agency, including Australia, despite the prompt action taken

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<sup>159</sup> Peter Cronau, 'Targeting Palestine', *Declassified Australia* (online 3 November 2023), <<https://declassifiedaus.org/2023/11/03/targeting-palestine/>>

<sup>160</sup> Ibid

<sup>161</sup> See Lemkin Institute for Genocide Prevention, 'Statement on Recent Threats to UNRWA and the Shift between Potential Complicity and Direct Involvement in the Crime of Genocide against Palestinians by Several Nations', *Lemkin Institute for Genocide Prevention* (online 31 January 2024), <[https://www.lemkininstitute.com/\\_files/ugd/391abe\\_7c0085dab25e41be85e80fb47bb98ade.pdf](https://www.lemkininstitute.com/_files/ugd/391abe_7c0085dab25e41be85e80fb47bb98ade.pdf)>, p. 5.

<sup>162</sup> Al Mezan, Al-Haq, and the Palestinian Centre for Human Rights, 'Palestinian Organizations Warn Against Potential Complicity in Genocide Due to UNRWA Funding Cut Impacting Humanitarian Aid to Gaza', *Al Mezan* (online 29 January 2024), <<https://www.mezan.org/en/post/46365>>.

<sup>163</sup> Ibid.

by UNRWA.<sup>164</sup> Australia froze \$6 million in funds pledged to UNRWA in January as a result of Israeli accusations,<sup>165</sup> which may affect food aid to Gaza, where 80% of the world's hungriest people are struggling to survive,<sup>166</sup> and over half a million people are starving and unable to find food and drinkable water.<sup>167</sup> Humanitarian aid that does pass the Israeli siege into Gaza requires UNRWA logistical operations to reach those most in need.<sup>168</sup> Indeed, this UN Agency is leading the distribution of humanitarian aid within Gaza, and this suspension could potentially bring an end to its operation in the area.<sup>169</sup> It is also important to note that 152 UNRWA staff members have been killed during the Israeli aggression on the Gaza Strip,<sup>170</sup> representing the highest number of UN aid workers killed in any conflict in the history of the UN. Moreover, at least 141 UNRWA facilities have been destroyed or damaged, including the headquarters in Gaza City. UNRWA-run schools, sheltering hundreds of thousands of internally displaced persons, have also been targeted, resulting in the death of 357 displaced individuals and injuries to 1,255 others.<sup>171</sup>

The Australian government made the decision to suspend UNRWA funding based on an unsubstantiated accusation by the party, Israel, accused of carrying out genocide,<sup>172</sup> and it is relevant to note that the number of accused UNRWA staff has since been revised downwards to four.<sup>173</sup> Further, Minister of Foreign Affairs Penny Wong admitted that she (and the Australian government) were not in full

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<sup>164</sup> Ruth Michaelson, 'Aid to Gaza and beyond at risk of collapse due to funding cuts, says UNRWA', *The Guardian* (online, 2 February 2024), <<https://www.theguardian.com/global-development/2024/feb/02/vital-aid-in-gaza-and-beyond-at-risk-of-collapse-due-to-unrwa-funding-cuts>>.

<sup>165</sup> Daniel Hurst, 'Israel accuses Australia of forgetting 'Hamas's culpability' for Gaza war as ministers consider UNRWA funding', *The Guardian* (online 2 February 2024), <<https://www.theguardian.com/australia-news/2024/feb/02/israel-accuses-australia-of-forgetting-hamass-culpability-for-gaza-war-as-ministers-consider-reinstating-unrwa-funding>>.

<sup>166</sup> Amnesty International Australia, 'Australia: Reverse Decision To Suspend Funding UNRWA,' *Amnesty International* (online 30 January 2024) <<https://www.amnesty.org.au/act-now/australia-reinstatefunding>>.

<sup>167</sup> OHCHR, 'Over one hundred days into the war, Israel destroying Gaza's food system and weaponizing food, say UN human rights experts', *OHCHR* (online 16 January 2024) <<https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>>.

<sup>168</sup> Lemkin Institute for Genocide Prevention, 'Statement on Recent Threats to UNRWA and the Shift between Potential Complicity and Direct Involvement in the Crime of Genocide against Palestinians by Several Nations', *Lemkin Institute for Genocide Prevention* (online 31 January 2024), <[https://www.lemkininstitute.com/\\_files/ugd/391abe\\_7c0085dab25e41be85e80fb47bb98ade.pdf](https://www.lemkininstitute.com/_files/ugd/391abe_7c0085dab25e41be85e80fb47bb98ade.pdf)>, p. 4.

<sup>169</sup> International Federation for Human Rights, 'Countries that suspend funds to UNRWA are fueling the ongoing genocide against Palestinians', *International Federation for Human Rights* (online, 30 January 2024), <<https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/countries-that-suspend-funds-to-unrwa-are-fueling-the-ongoing>>.

<sup>170</sup> UNRWA, 'UNRWA Situation Report #70 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem', UNRWA (online 29 January 2024), <<https://www.unrwa.org/resources/reports/unrwa-situation-report-70-situation-gaza-strip-and-west-bank-including-east-jerusalem>>.

<sup>171</sup> Al Mezan, Al-Haq, and the Palestinian Centre for Human Rights, 'Palestinian Organizations Warn Against Potential Complicity in Genocide Due to UNRWA Funding Cut Impacting Humanitarian Aid to Gaza', *Al Mezan* (online 29 January 2024), <<https://www.mezan.org/en/post/46365>>.

<sup>172</sup> ABC News, 'UNRWA to stop aid delivery in Gaza after US, Australia cease funding following Israeli October 7 accusations', *ABC* (online 29 January 2024) <<https://www.abc.net.au/news/2024-01-29/unrwa-aid-to-stop-in-gaza-after-october-7-allegations/103399340>>.

<sup>173</sup> Al Mezan, Al-Haq, and the Palestinian Centre for Human Rights, 'Palestinian Organizations Warn Against Potential Complicity in Genocide Due to UNRWA Funding Cut Impacting Humanitarian Aid to Gaza', *Al Mezan* (online 29 January 2024), <<https://www.mezan.org/en/post/46365>>.

possession ‘of the facts’ relating to these accusations but suspended the crucial UNRWA funding based simply on Israeli allegations. The following exchange occurred on the news program “7.30”, which airs on the national broadcaster, the Australian Broadcasting Corporation (“ABC”), between the Minister for Foreign Affairs and journalist Sarah Ferguson:<sup>174</sup>

**Ferguson:** ‘Which brings me back to the question; they’re facing a very serious situation and you’re not in full possession of the facts?’

**Foreign Minister:** ‘Well, no, we’re not.’

This decision by the Australian government is in stark contrast to the historically supportive relationship that it has had with UNRWA. Most recently, at the United Nations General Assembly on 1 November 2023, Australia reaffirmed its long-standing support to UNRWA. Australia voted for the United Nations General Assembly draft resolution ‘Assistance to Palestine Refugees’ (A/C.4/78/L.11),<sup>175</sup> which particularly called for:

‘all donors to continue to strengthen their efforts to meet the anticipated needs of the Agency, including with regard to increased expenditures and needs arising from conflicts and instability in the region and the serious socioeconomic and humanitarian situation, particularly in the Occupied Palestinian Territory, and those needs mentioned in recent emergency, recovery and reconstruction appeals and plans for the Gaza Strip and in the regional crisis response plans to address the situation of Palestine refugees in the Syrian Arab Republic and those Palestine refugees who have fled to countries in the region.’

Similarly, at the same session, Australia voted for the draft resolution ‘Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East’, which expressed ‘deep concern about the ‘extremely critical financial situation’ of UNRWA and attempts to ‘discredit the Agency despite its proven operational capacity’ and ‘consistent implementation of its mandate’. It also called upon Israel to ensure the safety of the personnel of the Agency and the protection of its institutions.<sup>176</sup>

The Australian government’s decision suddenly to suspend funding to UNRWA belies and discredits these commitments, and especially so considering that Israel has profoundly failed to protect the personnel of the UNRWA. The timing of its accusations against the Agency suggests a malevolent

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<sup>174</sup> TV Interview with Sarah Ferguson, Minister for Foreign Affairs (8 February 2024), <<https://www.foreignminister.gov.au/minister/penny-wong/transcript/tv-interview-sarah-ferguson-abc-730>>.

<sup>175</sup> *Assistance to Palestinian Refugees*, UN Doc A/C.4/78/L.11 (1 November 2023).

<sup>176</sup> *Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN Doc A/C.4/78/L.10 (1 November 2023).

motive to circumvent the applicability of the legally binding ICJ provisional measures in the case of *South Africa vs. Israel*.<sup>177</sup>

The Australian government's act of suspending funding to UNRWA amounts to an act of collective punishment against 5.9 million Palestinian refugees registered with UNRWA. The further downgrading, or even complete cessation, of UNRWA's life-saving activities in Gaza, as a result of de-funding by the Australian government and allies, may implicate them in complicity in genocide, as discussed below.<sup>178</sup> UN human rights experts have expressed grave concern at the decision by Australia and other states to suspend funding to the UNRWA, writing that 'We condemn in the strongest possible terms any efforts to delegitimise UNRWA as a whole... The grossly disproportionate decision to suspend funding by some of the largest donor states defies the basic principle of humanity, and goes against states' commitment to leave no one behind'. Further, they said, 'Denying basic human necessities, life-saving medical care, food, shelter, and antenatal care for pregnant women, is not just indefensible—it is a hindrance to the already complex journey toward peace'.<sup>179</sup> A coalition of vital humanitarian aid organisations, including Save the Children, American Friends Service Committee, Oxfam and relevant Médecins du Monde chapters from France, Switzerland, Canada, and Germany, also expressed their outrage to donor States, warning that removal of these funds threatens food and shelter for more than 1 million people.<sup>180</sup>

Finally, since 2017, Australia has increased its cooperation with Israel in relation to national security, defence and cyber security. Defence officials began annual strategic talks in 2018 and in early 2019, Australia appointed a resident Defence Attaché to the Embassy in Tel Aviv.<sup>181</sup> The Be'er Sheva Dialogue, held between Australian and Israeli governments and military officials, among others, pursued a fresh path to advance security cooperation between Australia and Israel when it last met in Canberra in November 2022. The dialogue is the peak independent platform for security exchange between the two nations. It is named after the Battle of Be'er Sheva (Beersheba in English), the victory over the Ottoman Turks led by British, Australian and New Zealand troops on 31 October 1917. The dialogue stresses the need for Australia and Israel to work even more closely in a range of areas, including defence. That means establishing military-to-military talks, military college exchanges, military medicine linkages and Israeli defence production in Australia.

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<sup>177</sup> Al Mezan, Al-Haq, and the Palestinian Centre for Human Rights, 'Palestinian Organizations Warn Against Potential Complicity in Genocide Due to UNRWA Funding Cut Impacting Humanitarian Aid to Gaza', *Al Mezan* (online 29 January 2024), <<https://www.mezan.org/en/post/46365>>.

<sup>178</sup> *Ibid.*

<sup>179</sup> OHCHR, 'States must reinstate and strengthen support to UNRWA amid unfolding genocide in Gaza: UN experts', OHCHR (online 2 February 2024), <<https://www.ohchr.org/en/press-releases/2024/02/states-must-reinstate-and-strengthen-support-unrwa-amid-unfolding-genocide>>.

<sup>180</sup> See Lemkin Institute for Genocide Prevention, 'Statement on Recent Threats to UNRWA and the Shift between Potential Complicity and Direct Involvement in the Crime of Genocide against Palestinians by Several Nations', *Lemkin Institute for Genocide Prevention* (online 31 January 2024), <[https://www.lemkininstitute.com/\\_files/ugd/391abe\\_7c0085dab25e41be85e80fb47bb98ade.pdf](https://www.lemkininstitute.com/_files/ugd/391abe_7c0085dab25e41be85e80fb47bb98ade.pdf)>, p. 2.

<sup>181</sup> See <https://www.dfat.gov.au/geo/israel/israel-country-brief>

# Alleged Offences

## Individual Criminal Responsibility pursuant to the Rome Statute

Pursuant to Articles 6 and 25(3) of the Rome Statute, complicity in the commission of genocide is a stand-alone crime, triggering individual criminal responsibility.<sup>182</sup> Any individual who commits, incites, conspires to commit or is complicit in genocide can be held liable under international law – including before the ICC.<sup>183</sup> Article 25(3)(c) of the Rome Statute states:

“(3) *In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: ... (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission*”.

Pursuant to this article, individual criminal responsibility attaches not only to the direct perpetrators of international crimes but also to those who aid, abet, or otherwise assist in the commission of a crime within the jurisdiction of the ICC, such as genocide.<sup>184</sup> What is required for this form of responsibility is that the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime.<sup>185</sup> The accomplice does not have to share with the perpetrator the genocidal intent itself, however.<sup>186</sup>

The provision of this assistance, aiding and abetting, must constitute a direct and substantial contribution to the commission of the crime, genocide in this case, as held by the ICTY in the *Tadić* case.<sup>187</sup> This criterion has been interpreted more broadly than it may be construed on first glance, with the concept of aiding and abetting including ‘all acts of assistance by words or acts that lend encouragement or support’.<sup>188</sup> This position has been affirmed by a Trial Chamber in *Delalić* and also in *Naletilić and Martinović*.<sup>189</sup> The nature of this assistance, aiding or abetting, can be as broad as to include ‘moral support and encouragement’;<sup>190</sup> there does not need to be a causal relationship in the

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<sup>182</sup> See *ICJ Bosnia and Herzegovina Judgement* paras. 167, 381; *ICC Statute*, art. 6 and 25(3)(c).

<sup>183</sup> *The Rome Statute of the International Criminal Court*, art. 6, opened for signature July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) (“Rome Statute”), <http://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>184</sup> *ICC Rome Statute*, art 25.

<sup>185</sup> *Prosecutor v. Charles Blé Goudé*, Case No. ICC-02/11-02/11, Pre-Trial Chamber, para. 167.

<sup>186</sup> *Musema Trial Judgement and Sentence*, ¶ 181

<sup>187</sup> *Tadić Appeal Judgement*, para. 229; And see *Aleksovski Appeal Judgement*, para. 162; *Furundžija Trial Judgement*, para. 234.

<sup>188</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-T, Trial Chamber, para. 689.

<sup>189</sup> *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Trial Chamber, paras. 325–329; *Prosecutor v. Naletilić and Martinović*, No. IT-98-34-T, Trial Chamber, para. 726

<sup>190</sup> See *Prosecutor v. Furundžija*, No. IT-95-17/1-T, Trial Chamber, paras. 190–249.

sense of the *conditio sine qua non* formula necessary, but the acts of assistance must ‘make a significant difference to the commission of the criminal act by the principal’.<sup>191</sup> Overall both ICTY Trial and Appeals Chambers have held that aiding and abetting requires ‘practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime’.<sup>192</sup>

This complicit contribution does not necessarily have to be material, as aiding and abetting genocide can be through the commission of ‘acts specifically aimed at assisting...or lending moral support’ for the perpetration of the crime, as long as ‘this support ha[s] a substantial effect on the perpetration of the crime’.<sup>193</sup> While material support, such as providing weapons or other instruments and means used in the commission of genocide, knowing that they would be used for that purpose, also constitutes a form of complicity.<sup>194</sup>

Under Article 25(3)(c) of the Rome Statute, to facilitate the commission of the crime, the aider and abettor must act with ‘purpose’. This means more than the mere knowledge that the accomplice aids the commission of the offence, as would suffice for complicity according to the ICTR and ICTY Statutes: ‘rather he must know as well as wish that his assistance shall facilitate the commission of the crime’.<sup>195</sup> This ‘purpose’ requirement, however, only refers to the act of facilitation, not to the main crime (i.e., genocide) itself.<sup>196</sup>

Importantly, the ICC does not recognise an individual’s official capacity as providing immunity from such scrutiny, with the ICC Appeals Chamber having found that there is no head of state immunity under customary international law in regard to international courts.<sup>197</sup>

It is alleged that the members of the Australian Parliament named in this Communiqué, Prime Minister Anthony Albanese, Foreign Minister Penny Wong, Defence Minister Richard Marles, Minister for Home Affairs Clare O’Neil, Minister for Government Services Bill Shorten, and Opposition Leader Peter Dutton have individual criminal responsibility for aiding and abetting the commission genocide under 25(3)(c) of the Rome Statute. As detailed in ‘Factual Allegations’ above, these persons have provided significant material and political support to Israel’s genocidal attack on Palestinians in the Gaza Strip through the authority of their parliamentary offices, but also in their capacity as individuals (“**named individuals**”). Further, the decision of the Australian government, supported by the named

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<sup>191</sup> Otto Triffterer & Kai Ambos (eds.), *The Rome Statute of the ICC: A Commentary* (2016), p. 1004.

<sup>192</sup> *Prosecutor v. Furundžija*, No. IT-95-17/1-T, Trial Chamber, paras. 217, 233-234, and held in *Prosecutor v. Furundžija* No. IT-95-17/1 A, Appeals Chamber, para. 117.

<sup>193</sup> *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Appeal Judgement, para. 44.

<sup>194</sup> *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgment, para. 178; *Prosecutor v. Akayesu*, para. 536.

<sup>195</sup> Cassese et al. (eds.), *The Rome Statute of the ICC* (2002), p. 801.

<sup>196</sup> See Otto Triffterer & Kai Ambos (eds.), *The Rome Statute of the ICC: A Commentary* (2016), p. 1010.

<sup>197</sup> ICC, ‘Al-Bashir Case: ICC Appeals Chamber confirms Jordan’s non-cooperation but reverses the decision referring it to the ASP and UNSC’, *ICC* (online 6 May 2019)

<<https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reversesdecision#:~:text=It%20concluded%20that%20there%20is,%C3%A0%2Dvis%20an%20international%20court>>



Ministers of that government here, to withdraw or suspend funding to UNRWA (see ‘Australian Material Support...’ above), which is the crucial and main provider of food and humanitarian aid to the Palestinian population in Gaza, may mean that these individuals are also “providing the means” for the commission of genocide under Article 25(3)(c) of the Rome Statute (this point is also taken up below in relation to Article 25(3)(d)).<sup>198</sup>

In addition to the material contributions provided by the Australian government, these named individuals have also aided and abetted Israel’s genocidal attack in Gaza through substantial ‘encouragement’ and ‘moral support’ of the attack,<sup>199</sup> which are two forms of conduct that may lead to criminal responsibility.<sup>200</sup> As the *Furundžija* Trial Chamber put it, “[w]hile any spectator can be said to be encouraging a spectacle – an audience being a necessary element of a spectacle – the spectator in these cases was only found to be complicit if his status was such that his presence had a significant legitimising or encouraging effect on the principals”.<sup>201</sup> It follows that encouragement and moral support, provided by Albanese, Wong, Marles, O’Neil, Shorten, and Dutton can only form a substantial contribution to a crime when the “spectator” (being the named individuals in this case) would know that their “presence” would be seen by the principal perpetrator (Israel, in this case) as encouragement or support.<sup>202</sup>

As discussed in ‘Background and Request’ above, Australia has been a staunch, historical ally to Israel with significant diplomatic, political, economic, and military ties to it. Against such background, the present condoning and supporting of Israel’s genocidal attack by individuals in the top echelons of the Australian Parliament has a highly significant legitimising and encouraging effect on Israel’s conduct. Because the individuals named herein are ministers in the Australian government or otherwise prominent politicians, they have a substantial degree of authority that entails ‘a clear signal of official tolerance’ towards Israeli actions against Palestinians in Gaza, which may indicate significant moral support for such genocidal attacks.<sup>203</sup> The individuals named in this Communiqué have not simply stood

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<sup>198</sup> An omission, that here of being food and humanitarian aid and support, also may constitute aiding and abetting genocide, as a positive “act” per se is not required (see *Prosecutor v. Akayesu*, para. 548).

<sup>199</sup> *Prosecutor v. Radoslav Brđjanin* (Appeal Judgement), IT-99-36-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 April 2007, available at: <https://www.refworld.org/cases,ICTY,48aae70a2.html> [accessed 20 October 2023].

<sup>200</sup> *Tadić Appeal Judgement*, para. 229; *Aleksovski Appeal Judgement*, para. 162; *Vasiljević Appeal Judgement*, para. 102; *Blaskić Appeal Judgement*, para. 48; *Kvočka et al. Appeal Judgement*, para. 89; *Simić Appeal Judgement*, para. 85.

<sup>201</sup> *Furundžija Trial Judgement*, para. 232

<sup>202</sup> In *Simić*, the Appeals Chamber found with regard to Simić’s alleged tacit encouragement of beatings in detention centres: “[t]he Appeals Chamber emphasises that the Trial Chamber’s findings do not allow for a clear inference as to how the Appellant’s conduct was construed by the principal perpetrators committing the beatings, or as to what effect his conduct may have had on their acts.” *Simić Appeal Judgement*, para. 130. See also *Bagilishema Trial Judgement*, para. 36; *Semanza Trial Judgement*, para. 389; *Ntagerura et al. Appeal Judgement*, para. 374

<sup>203</sup> See *Prosecutor v. Bagilishema*, No. ICTR-95-1A-T, Trial Chamber 1, para. 34; *Prosecutor v. Akayesu*, para. 693.

idly by as passive spectators, but have contributed moral encouragement, legitimacy, and political support to Israel's genocide against Palestinians in Gaza, while knowing about the genocidal intentions of the Israeli government and IDF and equally knowing that their provision of support would have contributed to the carrying out of such genocide.

In relation to the purpose of facilitating the commission of genocide or its attempted commission, it is contended that such purpose on the part of the named individuals may be inferred from the following:

(i) their immediate provision, following 7 October 2023, of assistance to Israel through renewed political, and continued military, support in the full knowledge of the intentions of the Israeli government and IDF to commit the crime of genocide, as evidenced by the widespread public declarations of the intention to do so and the subsequent actions that carried out this intention (as per **'Background and Request'** above). The very early statements of Israeli government and military figures, evidencing genocidal intent and incitement,<sup>204</sup> and the immediate disproportionate killing of civilians, including children, through airstrikes, put the named individuals on notice of the need to urge restraint. However, rather than emphasising restraint, the named individuals made statements (see **'Factual Allegations'** above) that minimised the need to urge restraint when pressed by journalists, redirecting the inquirer's attention to the extreme suffering of Israeli citizens on the 7 October 2023 and implying that nature of 7 October attacks justified Israel's approach. In so refusing, they impliedly endorsed the killing and total siege of Palestinian civilians. A chronology of conduct from the Israeli government and the named Australian government Ministers over the first 24 days can be seen in **ANNEXURE A – 'Israeli statements and actions and Australian Minister replies'**);

(ii) their continued provision of political and military support for Israel even as significant time passed from the initial shock of 7 October 2023. It is highly likely that the named individuals would have detailed knowledge and awareness of the genocidal nature of Israel's attacks against Palestinians in Gaza, especially as more evidence has accumulated of the genocidal intentions and effects of Israel's attack, notably since the ICJ indication of provisional measures in *South Africa v. Israel*;

(iii) the named individuals' refusal to support South Africa's application to the ICJ, even after the indication of provisional measures based on a finding of a plausible case of genocide in Gaza, in contrast to their support for Ukraine's application (see **'Factual Allegations'** above);

(iv) the named individuals' expression of solidarity on behalf of the Australian nation with the state of Israel and suggestion that this solidarity is permanent and unconditional. They have never withdrawn or amended this expression of solidarity (see **'Factual Allegations'** above);

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<sup>204</sup> See also fns 18-23, 55-58 above in "Background and Request".

(v) as evidenced by these named individuals' repeated assertions that Israel 'has a right to defend itself', their deliberate eliding of Israel's genocidal attacks on Palestinians within the Gaza Strip and legitimate self-defence at international law, which the former are not. In this way, these *individuals* have armed Israel with the political, and diplomatic support unlawfully to 'defend itself' (see '**Factual Allegations**' above). Accordingly, these Australian politicians plainly intend to facilitate Israel's actions in the Gaza Strip within the terms of Article 25(3)(c).

Article 25(3)(d) of the Rome Statute states:

*“(3) In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: ... (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime”.*

This provision extends accessorial liability to natural persons who 'in any other way, contribute to the commission or attempted commission of an international crime by a group of persons acting with a common purpose'. Article 25(3)(d) requires that, as in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, 'that: (i) the crime is committed (i.e. realised in its objective elements) by a group of persons acting with a common purpose; and (ii) the person charged provides a contribution to the commission of such a crime'.<sup>205</sup> The Rome Statute does not require such contribution under article 25(3)(d) to be "significant" or to reach a specified degree or extent, as 'the provision is a catch all form of liability, which applies when the suspect contributes to the commission or attempted commission of the crime "in any other way"', as ruled by the Pre-Trial Chamber.<sup>206</sup> The contribution, however, must 'be carried out either: (i) with the aim of furthering the purpose or the activity of the group in the case of a criminal common purpose or activity involving the commission of crimes within the jurisdiction of the Court; or (ii) in the knowledge of the intention of the group to commit the crimes'.<sup>207</sup>

The Israeli government and IDF comprise a group of persons who have acted with common purpose in prosecuting a genocidal war against Palestinians in Gaza, as detailed in 'Background and Request' above. The above-named individuals have provided political and material contributions to this crime,

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<sup>205</sup> *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Pre-Trial Chamber I, para. 27.

<sup>206</sup> *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Case No. ICC-01/09-01/11-373, para. 354; and see *Prosecutor v. Charles Blé Goudé*, para. 172.

<sup>207</sup> *Prosecutor v. Ahmad Al Faqi Al Mahdi*, para. 27.

as detailed in ‘Factual Allegations’ above. As stated, the named individuals (Anthony Albanese, Penny Wong, Richard Marles, Clare O’Neil, Bill Shorten, Peter Dutton) meant and intended to contribute to Israel’s actions in the Occupied Palestinian Territories of Gaza and the West Bank through consistent political, diplomatic, and material support. These actions were described by these individuals as ‘self-defence’ on the part of Israel. In so describing them the named individuals provided further contribution to Israel’s genocidal attack on Palestinians in Gaza.

These contributions were made both with the aim of furthering the purpose or the activity of Israel in committing genocide in Gaza, or alternatively, at least in the knowledge of the well-known public declarations of genocidal intent by the Israeli government and IDF.

Another example of members of the Australian Parliament furthering the purpose of Israel’s genocide against the Palestinian people in Gaza, include, first, the Australian government, primarily and apparently at the direction of Prime Minister Anthony Albanese and Foreign Minister Penny Wong, froze its previously-committed funding to UNRWA (see ‘Australian Material Support...’, above). This suspension of funding to UNRWA, based on flimsy allegations by Israel (see ‘Factual Allegations’ above), may evince complicity in collectively punishing a civilian population, as stated by UN Special Rapporteur Francesca Albanese.<sup>208</sup> These individuals, and indeed the Australian state, may therefore be directly contributing to the commission of Israel’s genocidal attacks, as per Article 25(3)(d)(i), by withholding food and humanitarian aid to “*Deliberately [inflict] on the group conditions of life calculated to bring about its physical destruction in whole or in part*” as per Article 6(c) of the Rome Statute.

Even prior to the decision by the Australian government and these named ministers to suspend UNRWA funding, conditions in Gaza were catastrophic as a result of the Israeli siege and unrestrained military aggression. As a result of these conditions, multiple humanitarian stakeholders activated the Integrated Food Security Phase Classification protocols in late 2023, whose Famine Review Committee found that as of January 2024, 500,000 Gazans were forced into Phase 5 ‘catastrophic’ levels of hunger – imminent risk of mass starvation and death.<sup>209</sup> The deliberate restriction of food aid into Gaza by the State of Israel is a major cause of the catastrophic levels of hunger; only about 30 food trucks have entered the Gaza Strip on a daily basis since the end of the humanitarian pause on 30 November 2023, compared to the 150-180 food trucks typically entering daily in October 2023. Those which enter now, provide an insufficient food supply to meet the nutritional requirements of the Gazan population.<sup>210</sup> The work

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<sup>208</sup> Farah Abdurahman, ‘Are UNRWA aid cuts an Australian breach of Genocide Convention, or another double standard?’, Michael West Media (online 3 February 2024), <<https://michaelwest.com.au/unrwa-cuts-wrong-wong/>>.

<sup>209</sup> The Integrated Food Security Phase Classification Famine Review Committee, ‘Gaza Strip: Famine Review of the IPC Analysis’, *Integrated Food Security Phase Classification* (online, 21 December 2023), <[https://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/IPC\\_Famine\\_Review\\_Report\\_Gaza.pdf](https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Report_Gaza.pdf)>, p. 1.

<sup>210</sup> *Ibid*, p. 2.

by UNRWA, as stated by Diana Alzeer Vice-President of the International Federation for Human Rights, is, at the time of the funding suspension by Australia and other countries, ‘now more than ever essential for the population in Gaza’, and the freezing of crucial support for the Agency allows ‘this genocide to continue’.<sup>211</sup>

Moreover, since 7 October 2023, Prime Minister Anthony Albanese, Foreign Minister Penny Wong, Defence Minister Richard Marles, Minister for Home Affairs Clare O’Neil, Minister for Government Services Bill Shorten, and Opposition Leader Peter Dutton have made no statements calling on Israel to cease its attacks on the Palestinian population in Gaza, and through their actions, have demonstrated no effort to use their own personal influence, nor the influence of their government offices, to deter all acts of genocide by Israel. A most recent joint statement from the Prime Minister with the Prime Ministers of Canada and New Zealand urged Israel ‘not to go down this path’ of conducting a ground offensive in Rafah ‘where 1.5 million Palestinians are taking refuge.’ The statement continued not to unequivocally condemn the siege and blockade on Gaza, the enforced starvation, the destruction of hospitals and civilian infrastructure necessary for the sustaining of life, the bombardment of a population that is trapped within Gaza. This statement was the first time since 7 October 2023 that the Prime Minister has sought to discourage Israel in any meaningful way. This does not excuse Australia’s actions in furthering Israel’s genocidal project, or alternatively, in contributing to it knowing that Israel intends to commit genocide, between 7 October 2023 and 15 February 2024.<sup>212</sup> On the contrary, these individuals have offered encouragement, support and affirmation of the campaign that Israel has undertaken, while supplying material support for Israel to further its military campaign in and siege of Gaza. These Australian Parliamentarians’ continued rhetorical, material and political support, amount, it is submitted, to positive action that has contributed to Israel’s continued genocidal operations within the scope of Article 25(3) (d) of the Rome Statute.

## **State Responsibility of Australia**

### *Failure to Prevent or Respond to Genocide*

While the authors of this Communique are aware that the ICC is not responsible for the enforcement of the *Genocide Convention*, they include the following information to provide greater context for the ICC’s investigation into the accessorial liability of members of the Australian Parliament for genocide. The Australian Parliament must be taken to be aware of Australia’s obligations pursuant to the *Genocide*

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<sup>211</sup> International Federation for Human Rights, ‘Countries that suspend funds to UNRWA are fueling the ongoing genocide against Palestinians’, *International Federation for Human Rights* (online, 30 January 2024), <<https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/countries-that-suspend-funds-to-unrwa-are-fueling-the-ongoing>>.

<sup>212</sup> Hon Anthony Albanese, Justin Trudeau, Christopher Luxon, *Joint Statement by the Prime Ministers of Australia, Canada and New Zealand* (15 February 2024), <<https://www.pm.gov.au/media/joint-statement-prime-ministers-australia-canada-and-new-zealand-0>>

*Convention*. Their provision of assistance to Israel in the ways set out above in light of their knowledge of these obligations, it is submitted, increases the likelihood that that assistance was deliberate in the way(s) required by Articles 25(3)(c) and (d) of the Rome Statute.

In accordance with Article 1 of the *Genocide Convention*, there is a legal duty on State Parties to the Convention to prevent genocide.<sup>213</sup> This undertaking is not a passive obligation, but rather “implies that each State party must assess whether a genocide or a serious risk of genocide exists.”<sup>214</sup> The obligation to prevent reflects the international community’s collective commitment to ensure that groups are not targeted for destruction because of their identity. In the present section of this Communiqué we set out these contextual elements before identifying the prohibited acts entailing individual, and State, criminal liability.

Like both Palestine and Israel, Australia is a signatory to the *Genocide Convention*, the first human rights treaty adopted by the United Nations General Assembly and considered the building block of the international human rights system.<sup>215</sup> Indeed, Australia was one of the first countries to ratify the Genocide Convention in 1949. The Genocide Convention imposes a positive duty on all 153 signatories both to prevent and to punish genocide.<sup>216</sup> It criminalises not only the commission of genocide, but its incitement as well as any attempt to commit genocide, and complicity in genocide.

The ICJ has made clear that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”<sup>217</sup> As per the previous discussion under the above heading ‘Background and Request’, the possibility of a genocide being perpetrated by Israel upon Palestinians living in Gaza was widely and prominently identified by genocide experts, legal scholars, international organizations, humanitarian bodies, and the United Nations, not long after 7 October 2023. It is inconceivable that Australia, and its public officials and government ministers, would ever have been unaware of the violence occurring in Gaza at this time, especially due to the significant political, diplomatic, and material assistance that Australia affords to Israel. It is reasonable to assume that the aforementioned Australian Parliamentarians would be briefed regularly on the extent of Israel’s attack

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<sup>213</sup> “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” *Genocide Convention*, art. 1.

<sup>214</sup> *ICJ Bosnia and Herzegovina Judgment*, p. 43, at paras 430-431

<sup>215</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted by the General Assembly of the United Nations on December 9, 1948 as General Assembly Resolution 260, and entered into force on January 12, 1951 (“Genocide Convention”).

<sup>216</sup> As the International Court of Justice made clear in its first pronouncement on the *Genocide Convention*, “the contracting states do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention.” *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, 23, <https://www.icj-cij.org/case/12>

<sup>217</sup> *ICJ Bosnia and Herzegovina Judgment*, p. 43, at paras 431-32. (stating “[I]t is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed”)

on Gaza, or at least have access to publicly available information, which would mean that the test of whether they ‘should normally have learned of, the existence of a serious risk that genocide will be committed’ would be met.

States are required to take all measures “reasonably available to them” to prevent the risk of genocide from the moment that they would have been reasonably expected to have known about it onwards, “if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent.”<sup>218</sup> To find a breach of the obligation to prevent, “it does not need to be proven that the State concerned definitely had the power to prevent the genocide; it is sufficient that it had the means to do so and that it manifestly refrained from using them”.<sup>219</sup> Among the factors relevant to determining whether a State, and its officials, have breached the duty to prevent genocide are strong “political, military and financial links,” as well as links of all other kinds, between the authorities of that State and the main actors in the events.<sup>220</sup> States will be held responsible for failing to prevent “if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”<sup>221</sup> This positive duty also clearly extends outside of States’ territories, to the extent they exercise influence extra-territorially.<sup>222</sup>

Australia has only very recently affirmed its understanding of, and agreement to, the obligations to prevent and punish genocide.<sup>223</sup> When it intervened in *Allegations of Genocide under Convention on Prevention and Punishment of Crimes of Genocide (Ukr. v. Russ.)* before the ICJ, Australia explicitly acknowledged that ‘the Court has confirmed that the Convention imposes duties owed *erga omnes partes*.<sup>224</sup> As such, the proper construction of the Convention is of great importance to all parties to the Convention. That Australia and all Contracting Parties have an interest in safeguarding the values underlying the *Genocide Convention*, and ensuring against its misuse, was confirmed by the Court shortly after the Convention was approved for signature and ratification’. However, despite Australia’s affirmation of the duties imposed by the *Genocide Convention*, Prime Minister Anthony Albanese has stated that Australia will not intervene in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, dealing with similar

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<sup>218</sup> ICJ *Bosnia and Herzegovina Judgment*, p. 43, at paras 430-31.

<sup>219</sup> Ibid. at 225, ¶ 438.

<sup>220</sup> Ibid. at 221-23, ¶¶ 430-31, 434.

<sup>221</sup> Ibid. p. 43, at paras 430-31

<sup>222</sup> Center for Constitutional Rights, ‘Emergency Legal Briefing Paper’ (online 18 October 2023), <[https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime\\_ww.pdf](https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf)>, p. 10

<sup>223</sup> See, generally, *Intervention Pursuant to Article 63 of the Statute of the International Court of Justice* Submitted by Australia, *Allegations of Genocide under Convention on Prevention and Punishment of Crimes of Genocide (Ukr. v. Russ.)*, I.C.J. (Sept. 30, 2022) <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220930-WRI-01-00-EN.pdf>.

<sup>224</sup> Citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 47, para. 87.

questions of genocide,<sup>225</sup> demonstrating a stark double-standard in Australia's attitude toward its obligations pursuant to the Genocide Convention.

In the present case, Australia could have influenced the ability for Israel successfully to conduct a genocide of Palestinians in Gaza through its strong "political, military and financial links" with Israel, reviewed in **Framework and Context** above. Politically, Australia has been one of the few nations, especially in recent years (see '**Framework and Context**' above) that has either voted against, or abstained from, UN General Assembly resolutions that call for a peaceful settlement to the Israel-Palestine conflict, grounded in globally recognized notions of international law. Recently, at the 10th Emergency Special Session of the United Nations General Assembly dedicated to Israel and Palestine, held due to the violence engulfing Gaza, Australia abstained from supporting GA Resolution ES-10/21 that called for an "immediate and sustained" humanitarian truce and cessation of hostilities.<sup>226</sup> Australia also voted against the annual UN GA Resolution calling on Israel to withdraw from the occupied Syrian Golan Heights on 28 November 2023,<sup>227</sup> which dramatically reversed Australia's long-time abstention on this resolution. Only at the United Nations General Assembly on 12 December 2023, did Australia finally join the majority of nations in voting for a resolution that called for a humanitarian ceasefire in the current Israeli war on Gaza.<sup>228</sup> Australia, through its close and significant ties as an ally and friend to Israel, both historically and contemporaneously, manifestly had the power to prevent, or at least influence, the Israeli genocide of the Palestinian people in Gaza. Australia has plainly failed to take any measure to try to prevent Israel's genocide of Palestinians in Gaza, and has, on the contrary, encouraged such actions while providing significant political cover, if not also military hardware, intelligence and possibly troops. These actions may have contributed to failing to prevent the genocide.

### *Complicity in Genocide*

In accordance with Article 3(e) of the Genocide Convention, complicity in genocide is a stand-alone crime triggering State responsibility, as affirmed by the ICJ.<sup>229</sup> Complicity can only exist when there is

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<sup>225</sup> Daniel Hurst, 'Albanese says Australia will not participate in ICJ case against Israel and instead focus on 'political solution'', *The Guardian* (online 15 January 2024), <<https://www.theguardian.com/world/2024/jan/15/albanese-australia-un-icj-genocide-trial-israel-south-africa-wont-participate>>.

<sup>226</sup> Lisa Visentin, 'Australia abstains on 'incomplete' UN resolution for Gaza truce', *The Sydney Morning Herald* (online 28 October 2023), <<https://www.smh.com.au/politics/federal/australia-abstains-on-incomplete-un-resolution-for-gaza-truce-20231028-p5efqv.html>>

<sup>227</sup> UN, 'Staggering Loss of Life in Gaza, Follow-on to Temporary Truce Dominate General Assembly Debate on Decades-Long Question of Palestine', *UN* (online 28 November 2023), <<https://press.un.org/en/2023/ga12566.doc.htm>>.

<sup>228</sup> Al Jazeera, 'UN General Assembly Votes Overwhelmingly in Favour of Gaza Ceasefire', *Al Jazeera* (online 12 December 2023), <<https://www.aljazeera.com/news/2023/12/12/un-general-assembly-votes-overwhelmingly-in-favour-of-gaza-ceasefire>>.

<sup>229</sup> See *ICJ Bosnia and Herzegovina Judgement* paras. 167, 381; *Genocide Convention*, Art III(e), Art. 4 ("Persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals").



a punishable act of genocide by another State or persons, with which the accomplice associates itself.<sup>230</sup> The International Law Commission's Articles on State Responsibility apply when assessing the responsibility of States for internationally wrongful acts.<sup>231</sup> As the ICJ has explained, for purposes of State responsibility under the *Genocide Convention*, complicity "includes the provision of means to enable or facilitate the commission of the crime . . . it is similar to a category found among the customary rules constituting the law of State responsibility, that of the 'aid or assistance' furnished by one State for the commission of a wrongful act by another State."<sup>232</sup> It is enough that a State acts with "knowledge of the wrongful act" - in this case genocide - when it provides aid or support; it does not need to share the specific intent to commit genocide.<sup>233</sup> In the present section we set out these contextual elements before identifying the prohibited acts entailing State liability.

With regard to a State, complicity requires that some positive action has been taken to furnish aid or assistance to the perpetrators of the genocide.<sup>234</sup> For instance, a finding of complicity against a State will be made if its "organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts or to those who were on the point of committing them, enabled or facilitated the commission of the acts."<sup>235</sup>

As previously outlined, Australia has supplied Israel with military equipment, intelligence data, and significant and ongoing political support. Prominently, one of the most steadfast points of rhetorical and political support that Australia has provided to Israel concerns the posited "right to self-defence" that Israel allegedly has in perpetrating these attacks against Palestinians in Gaza. As demonstrated by Australian ministerial public statements (see **ANNEXURE A – 'Israeli statements and actions and Australian Minister replies'**), the Australian government has defended Israel's genocidal actions against Palestinians in Gaza on the basis of Israel's right self-defence. However, as international law makes clear, "no State or individual can ever be permitted to justify genocide in the name of self-defence."<sup>236</sup> Indeed, the specific intent to destroy a group, which has clearly been intended by the Israeli government (see 'Background and Request' above), is incompatible with the notion of self-defence. International criminal law scholars agree that the gravity and specificity of the crime of genocide renders

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<sup>230</sup> A state or individual can be held responsible for complicity even if the principal perpetrator has not been tried or had liability established. See *ICJ Bosnia and Herzegovina Judgment*, para. 182.

<sup>231</sup> See *ICJ Croatia 2015 Judgment*, para. 128.

<sup>232</sup> *ICJ Bosnia and Herzegovina Judgment*, para. 419.

<sup>233</sup> *Ibid* at paras. 420 (looking to aiding and abetting under the ILC's Articles of State Responsibility, art. 16) and 421.

<sup>234</sup> *Ibid*, para. 432.

<sup>235</sup> *Ibid*, para. 432.

<sup>236</sup> See William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge University Press 2009) at p. 395; *Prosecutor v. Martić* (Case No. IT-95-11-R61), *Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence*, 13 March 1996, para. 17.

inconceivable the justification of defensive force under Article 31(1)(c) of the Rome Statute.<sup>237</sup> Further, the right to self-defence is limited by the principles of international law,<sup>238</sup> as well as the rule of proportionality, and “cannot comprise retaliatory or punitive action. For this reason, no State or individual can ever be permitted to justify genocide in the name of self-defence”.<sup>239</sup>

The Australian government and Australian Parliamentarians have been active in their support of Israel for a lengthy period, which would likely be seen by Israel as encouraging or supportive of their actions. Historically, Australia has advocated on behalf of Israel to hinder UN General Assembly resolutions and ICC investigations into war crimes allegedly committed by Israel and Hamas, which has contributed to an environment of lawlessness in that conflict, and Australian Ministers have continued these actions during the current violence, as reviewed above (see **Framework and Context** above). Australian government Ministers have also further assisted in Israel’s campaign through permitting the selling of weapons to Israel,<sup>240</sup> maintenance of Australian government military technology contracts with Israel,<sup>241</sup> allowing (if not encouraging) dual Australian-Israeli nationals to travel overseas to participate in a reasonably foreseeable genocide,<sup>242</sup> suspending vital food aid to the besieged Palestinian population in Gaza, while resolutely deciding to do nothing to stop the genocide, such as applying sanctions to Israel, as Australia has recently done in relation to Russia.<sup>243</sup>

Further, the Australian government’s recent statements and (in)action following the ICJ indication of provisional measures in *South Africa v. Israel* on 26 January 2024 suggests further assistance to Israel’s

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<sup>237</sup> See, e.g. Hannah Tonkin, ‘Defense Force Under the Rome Statute’ [2005] (6) *Melbourne Journal of International Law*; see also Schabas, *Genocide in International Law: The Crime of Crimes*, Chapter 7 (“Defences to Genocide”)

<sup>238</sup> See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1. C.J. Reports 1996, p. 226, para. 42

<sup>239</sup> See Schabas, *Genocide in International Law: The Crime of Crimes* at p. 395; *Prosecutor v. Martić* (Case No. IT-95-11-R61), *Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence*, 13 March 1996, para. 17.

<sup>240</sup> See, for example, Amnesty International, ‘Australia: Stop Selling Arms to the Israeli Authorities’, *Amnesty International Australia* (online),

< <https://action.amnesty.org.au/act-now/australia-stop-selling-arms-to-the-israeli-authorities>>;

BDS Australia, ‘Australian government Defence Contracts with Israel Exposed’, *Boycott, Divestment and Sanctions Australia* (online), <<https://bdsaustralia.net.au/australian-government-defence-contracts-with-israel-exposed/>>; Michelle Fahy, ‘Defence hides Australia’s Weapons sales to Israel amid war crimes investigation into Palestine’, *Michael West* (online 16 August 2021), < <https://michaelwest.com.au/defence-hides-australias-weapon-sales-to-israel-amid-war-crimes-investigation-into-palestine/>>.

<sup>241</sup> ACIJ, ‘Australia’s international obligations relating to trade with Israel’, *Australian Centre for International Justice* (online 7 May 2021), [https://acij.org.au/wp-content/uploads/2021/05/ACIJ-and-PHROC-Submission-DFAT-Trade-with-Israel-FINAL\\_Fix1.pdf](https://acij.org.au/wp-content/uploads/2021/05/ACIJ-and-PHROC-Submission-DFAT-Trade-with-Israel-FINAL_Fix1.pdf), paras. 80-85

<sup>242</sup> See, for example, Jack Quail, ‘Australian-Israeli military reservists arrive in Israel as Gaza ground invasion looms’, *News.com.au* (online 13 October 2023), <<https://www.news.com.au/world/middle-east/australianisraeli-militaryreservists-arrive-in-israel-as-gaza-ground-invasion-looms/newsstory/1d54e3a24a2f6bb1fe897624137f1a22>>; Sherryn Groch, “We are resilient’: Australian reservists called up in Israel join fight”, *The Sydney Morning Herald* (online 12 October 2023), <<https://www.smh.com.au/world/middle-east/we-aresilient-australian-reservists-called-up-in-israel-join-fight-20231012-p5ebn9.html>>

<sup>243</sup> See Snapshot Russia/Ukraine Sanctions Regime, Department of Foreign Affairs and Trade: <https://www.dfat.gov.au/sites/default/files/sanctions-snapshot-russia-ukraine-regime.pdf>

genocidal attack against Palestinians in Gaza. Although the ICJ's indication of provisional measures is without prejudice to the Court's decision on the merits, it puts every State, including Australia, on notice of the potential legal implications of their ongoing relations with the State of Israel.<sup>244</sup> Indeed, the ICJ's ruling that it is "plausible" that Israel is violating the *Genocide Convention* has important legal implications for Australia. As a signatory to the *Genocide Convention*, Australia has binding international obligations to prevent and punish genocide, conspiracy to commit genocide, incitement to genocide and complicity in genocide. The obligation to prevent genocide arises 'the instant that the state learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed'.<sup>245</sup> Australia has 'a duty to further the implementation of the orders made by the Court, including by exercising its influence with Israel... to employ all reasonable measures to prevent genocide'.<sup>246</sup>

As reviewed under 'Factual Allegations' (above), the muted response of the Australian government and indicates that Australia is not seriously pursuing its obligations under the *Genocide Convention* and in international law, to prevent genocide. More than this, Australia was one of the first countries to suspend funding to the vital UNRWA, a day after the ICJ indicated provisional measures (on 27 January 2024), following unsubstantiated Israeli allegations of a small number of UNRWA staff having some involvement in the Hamas-led 7 October 2023 attack (see '**Factual Allegations**' above). As stated by the Lemkin Institute for Genocide Prevention, this decision by Australia and other countries to suspend funding to the UNRWA represents a shift 'from potential complicity in genocide to direct involvement in engineered famine'.<sup>247</sup> This interpretation was supported by international lawyer Francis Boyle, who argued that the suspension of aid to UNRWA meant that States, such as Australia, are no longer just aiding and abetting 'Israeli Genocide against the Palestinians in violation of Genocide Convention article 3(e)', as analysed here, but are now 'directly violating *Genocide Convention* article 2(c) by themselves',<sup>248</sup> by 'Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...'.<sup>249</sup>

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<sup>244</sup> International Legal Scholars Against Genocide, 'Open Letter to the Australian government regarding the ICJ provisional measures ruling', *The Overland* (online 31 January 2024), <<https://overland.org.au/2024/02/open-letter-to-the-australian-government-regarding-the-icj-provisional-measures-ruling/>>.

<sup>245</sup> *ICJ Bosnia and Herzegovina Judgment*, para. 431.

<sup>246</sup> Human Rights Law Centre, 'ICJ South Africa v. Israel: Human Rights Law Centre statement', *Human Rights Law Centre* (online 1 February 2024), <<https://www.hrlc.org.au/news/2024/2/1/icj-south-africa-v-israel-human-rights-law-centre-statement>>.

<sup>247</sup> Lemkin Institute for Genocide Prevention, 'Statement on Recent Threats to UNRWA and the Shift between Potential Complicity and Direct Involvement in the Crime of Genocide against Palestinians by Several Nations', *Lemkin Institute for Genocide Prevention* (online 31 January 2024), <[https://www.lemkininstitute.com/\\_files/ugd/391abe\\_7c0085dab25e41be85e80fb47bb98ade.pdf](https://www.lemkininstitute.com/_files/ugd/391abe_7c0085dab25e41be85e80fb47bb98ade.pdf)>, p. 1.

<sup>248</sup> @samhusseini (Citing Francis Boyle), 'Francis Boyle states' (*Twitter*, 28 January 2024, 5:58AM AEST), <<https://twitter.com/samhusseini/status/1751318841232122202>>.

<sup>249</sup> *Genocide Convention*, art. II(c).

The 27 January 2024 decision by the Australian government to suspend funding to the UNRWA also directly contravenes the provisional measures of the ICJ in *South Africa v. Israel*, and facilitates Israel's circumvention of these measures. The relevant measures that are affected by the suspension of funding to the UNRWA, which will restrict food and humanitarian aid into Gaza for Palestinians even further, are as follows (emphasis added):<sup>250</sup>

(3) The Republic of South Africa and the State of Israel shall each, in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people, **take all reasonable measures within their power to prevent genocide.**

(4) The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people as a group protected by the Convention on the Prevention and Punishment of the Crime of Genocide, **desist from the commission of any and all acts** within the scope of Article II of the Convention, in particular

... (c) **deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and**

(5) The State of Israel shall, pursuant to point (4) (c) above, in relation to Palestinians, desist from, and take all measures within its power including the rescinding of relevant orders, of restrictions and/or of prohibitions to prevent:

... (b) **the deprivation of:**

(i) **access to adequate food and water;**

(ii) **access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation;**

The foreseeable, further restriction of food and humanitarian aid as a result of the suspension of funding to UNRWA would clearly contribute to 'inflicting on the group [Palestinians] conditions of life calculated to bring about its physical destruction in whole or in part' through the deprivation of 'access to adequate food and water', and 'access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation'. The United Nations Special Rapporteur on the occupied Palestinian territories, Francesca Albanese, concurs with this assessment, and states that the suspension of UNRWA funding by Australia and other states 'overtly def[ies]' the preventative measures ordered

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<sup>250</sup> ICJ, '*South Africa v. Israel*: Request for the Indication of Provisional Measures', *ICJ*, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-sum-01-00-en.pdf>>, pp. 1-2.

in *South Africa v. Israel*.<sup>251</sup> This assessment is also supported by Dr. Alonso Gurmendi Dunkelberg, an international law expert at the University of Oxford, who noted that nations defunding UNRWA ‘are now joining in inflicting these conditions of life that will bring about the destruction of Palestinians’.<sup>252</sup>

## Elements for Preliminary Examination by Prosecutor

### Jurisdiction

It is respectfully submitted that the OTP can be satisfied that the crimes referred to in this Communiqué fall within the jurisdiction of the ICC. First, with respect to jurisdiction *ratione temporis*, the allegations in this Communiqué cover a specific period in 2023, though the contemporary genocide (and submitted accessorial liability) has historical antecedents. Specifically, as per Article 11 of the Rome Statute, the matters described occurred after 1 September 2002, after the entry into force of the Rome Statute both in general (1 July 2002) and in relation to Australia (1 September 2002) and Palestine (1 April 2015). Second, with respect to jurisdiction *ratione materiae*, the subject matter of this Communiqué concerns genocide, as set out in Article 6 of the Rome Statute. Third, the crimes described in this Communiqué are alleged to have been committed by nationals of a State Party to the Rome Statute as well as on the territory of a State Party, namely Australia. Both Australia and Palestine have signed and ratified the Rome Statute and have accepted the jurisdiction of the Court for crimes committed either by their nationals or on their territory. Jurisdiction can be triggered by the Prosecutor, by virtue of his *proprio motu* powers set out in Article 15 of the Rome Statute. It is important that the Prosecutor makes use of these powers, especially when the situation within the Court’s jurisdiction is unlikely to be referred by a State Party or the Security Council. In the case of relatively powerful States, such as Australia, which both profess complete control over their territory and are in general good standing in the international community, the Prosecutor’s initiative becomes all the more essential.

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<sup>251</sup> @FranceskAlbs (Francesca Albanese), ‘Defunding UNRWA’ (*Twitter*, 28 January 2024, 9:36PM AEST), <<https://twitter.com/FranceskAlbs/status/1751554749659324847>>.

<sup>252</sup> @Alonso\_GD (Alonso Gurmendi), ‘South Africa’s case’ (*Twitter*, 28 January 2024, 10:09AM AEST), <[https://twitter.com/Alonso\\_GD/status/1751382040644079911](https://twitter.com/Alonso_GD/status/1751382040644079911)>.

## **Admissibility: Complementarity**

The ICC is a residual mechanism, a court of last resort, complementary to national jurisdictions, which only operates when domestic courts have not responded, or have not responded genuinely, to crimes by way of investigating, prosecuting or trying alleged perpetrators. This is the case here.<sup>253</sup>

Articles 53(1)(b) and 17(1)(a-c) of the Rome Statute set out the principle of complementarity. As a court of last resort, the ICC works in tandem with States, only investigating criminal claims when States with primary jurisdiction are unwilling or unable to genuinely do so. Assessment of the latter is “case-specific” and will determine whether potential case(s) related to the situation are being investigated or prosecuted by States.

The test set out in Article 17 of the Rome Statute also applies to preliminary examinations. A case is “inadmissible” before the Court when: a) “the case is being investigated or prosecuted by the State which has jurisdiction over it;”<sup>254</sup> b) “the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned;”<sup>255</sup> and c) the person concerned has “already been tried for conduct which is the subject of the complaint”.<sup>256</sup> Each of these inadmissibility standards, however, has exceptions. For “a” and “b,” the ICC may intervene when “the State is unwilling or unable to genuinely carry out the investigation”,<sup>257</sup> or “the decision resulted” from this inability or unwillingness.<sup>258</sup> And the ICC may intervene pursuant to “c” if the earlier proceedings were “for the purpose of shielding the person concerned from criminal responsibility,” or were not “conducted independently or impartially in accordance with the norms of due process recognised by international law” and “inconsistent with an intent to bring the person concerned to justice”.<sup>259</sup> Cases with past/current/projected domestic investigation (those under (1)(a) and (1)(b)) are only admissible in the ICC when States with original jurisdiction are unable or unwilling genuinely to investigate or prosecute. A detailed analysis of Australia’s unwillingness is unnecessary, as there have not been, nor are there, currently, any criminal investigations of the conduct at issue. Accordingly, the clear language of the Rome Statute requires a criminal investigation by the ICC.

## **Admissibility: Gravity**

The conduct described in this Communiqué and qualified as crimes as per the Rome Statute and Genocide Convention justify the Prosecutor acting on his own initiative. The nature and scale of the

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<sup>253</sup> The concern about individual criminal liability has been brought to the Prime Minister's attention twice by letter from Birchgrove Legal, on 25 October 2023 and 1 February 2024, and there has been no response.

<sup>254</sup> *Rome Statute*, art. 17(1)(a).

<sup>255</sup> *Ibid*, art. 17(1)(b).

<sup>256</sup> *Ibid*, art. 17(1)(c).

<sup>257</sup> *Ibid*, art. 17(1)(a).

<sup>258</sup> *Ibid*, art. 17(1)(b).

<sup>259</sup> *Ibid*, art. 20(3).

crimes at issue are of such severity, in both quantitative and qualitative terms as well as because of their normalising and precedent-setting nature, that they urgently require deterrent action by the Court. In the context of a situation, as opposed to a case, the Prosecutor should consider gravity “against the backdrop of the likely set of cases or ‘potential cases,’” that would rise from investigating the situation,<sup>260</sup> evaluating a) the qualitative and quantitative elements of the alleged crimes and b) those who bear the greatest responsibility for the crimes alleged. A flexible test,<sup>261</sup> gravity analysis should not be “overly restrictive” and “hamper the deterrent role of the Court”,<sup>262</sup> but should prevent the court from adjudicating “peripheral cases” and “insignificant” crimes.

The conduct of facilitating the commission of genocide, aiding, abetting or otherwise assisting in its commission or its attempted commission, including providing the means for its commission, or contributing to the commission or attempted commission of such a crime by a group of persons acting with a common purpose are neither peripheral nor insignificant crimes, but central to the entire international legal system and the *raison d'être* of the ICC. Israel’s genocidal attack on Palestinians in Gaza is of central, and growing, importance to the international legal system and the principles the Court seeks to uphold. The scale of these crimes has been outlined under ‘Background and Request’ (above), and represent tens of thousands of Palestinians killed, thousands more maimed and injured, millions displaced, and cultural, health, sport, legal, government and educational institutions destroyed. The damage done so far moves beyond physical damage to significant mental trauma in one of the most confined, and youngest, populations on the planet. Gravity, in the Court’s jurisprudence, aims at “maximiz[ing] the Court’s deterrent effect”.<sup>263</sup> The need for deterrence is even more pronounced when a set of actions that qualify as international crimes, as we have shown, is normalised and treated as acceptable conduct. Unless the ICC takes action denouncing and deterring contributions to genocide, members of the Australian Parliament, such as those of the Australian government and other political figures named above will no doubt encourage and assist in further genocides against other peoples. The crimes committed by the named individuals, while satisfying established quantitative and qualitative criteria, should be understood as especially grave given their widespread impact and capacity to normalise genocide, considering Australia’s generally respected position in the international community. Investigating them is, accordingly, an important priority for the Court in fulfilling its role.

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<sup>260</sup> Pre-trial Chamber II, Case No. ICC-01/09, *Decision Pursuant to art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, ¶ 58 (Mar. 31, 2010), [https://www.iccpi.int/CourtRecords/CR2010\\_02399.PDF](https://www.iccpi.int/CourtRecords/CR2010_02399.PDF).

<sup>261</sup> See, e.g., *Prosecutor v Abu Garda*, Case No. ICC-02/05-02/09, *Decision on the Confirmation of Charges*, ¶¶ 28-34 (Feb. 8, 2010), [https://www.icc-cpi.int/CourtRecords/CR2010\\_00753.PDF](https://www.icc-cpi.int/CourtRecords/CR2010_00753.PDF).

<sup>262</sup> The Appeals Chamber, ICC-01/04, *Decision on the Prosecutor’s Application for Warrants of Arrest*, Article 58, ¶¶ 69-79 (July 13, 2006), [https://www.icc-cpi.int/CourtRecords/CR2006\\_01807.PDF](https://www.icc-cpi.int/CourtRecords/CR2006_01807.PDF).

<sup>263</sup> *Prosecutor v Dyilo*, Case No. ICC-01-04-01/06, *Decision on the confirmation of the charges*, ¶ 48 (Jan. 29, 2007), [https://www.icc-cpi.int/CourtRecords/CR2007\\_02360.PDF](https://www.icc-cpi.int/CourtRecords/CR2007_02360.PDF).

## **Conclusion**

For the foregoing reasons, we urge the OTP to consider opening a Preliminary Examination into (or alternatively adding to the existing investigation into the Situation in the State of Palestine) the information and evidence described in this Communiqué, that is, the assistance provided by named members of the Australian Parliament to the Israeli government and IDF in their commission of genocide.



# ANNEXURE A

**7<sup>th</sup> OCTOBER 2023**

## Evidence of risk of international crimes by Israel

1. On 7 October 2023, the Prime Minister of Israel, Benjamin Netanyahu, said on Twitter: “All of the places which Hamas is deployed, hiding and operating in, that wicked city, we will turn them into rubble. I say to the residents of Gaza: Leave now because we will operate forcefully everywhere”.<sup>1</sup> [emphasis added]
2. In a televised address, Mr Netanyahu also said, “We will take mighty vengeance for this black day. We will take revenge for all the young people who lost their lives. We will target all of Hamas’s positions. We will turn Gaza into a deserted island. To the citizens of Gaza, I say. You must leave now. We will target each and every corner of the strip.”<sup>2</sup>

Prime Minister Netanyahu’s reference to operating forcefully “everywhere” and turning Gaza into a “deserted island” evinces an intention to kill Gazans and/or to cause serious bodily or mental harm to them.

Against the background of Israel’s decades-long occupation of Gaza during which it has sought through the construction of illegal settlements to encroach further and further into Palestinian territory and otherwise to control the lives of Gazans, Israel acting forcefully “everywhere” plainly has the intent of destroying the Palestinian ethnic group in whole or in part. This amounts to genocide within Article 6 of the Rome Statute.

3. Evidence of wilful killing<sup>3</sup>, and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly<sup>4</sup>: Israeli forces fired several missiles at a residential building in the Al-Zaytoun neighbourhood, east of Gaza City, around 8:20 p.m. on October 7, killing 10 Palestinians, including five children, according to documentation collected by Defense for Children International - Palestine. The attack killed brothers Ibtisam Adel Awni Al-Dous, 17, Rawand Adel Awni Al-Dous, 15, Ahmad Adel Awni Al-Dous, 10, and three-year-old Zaid Adel Awni Al-Dous, as well as their cousin, four-year-old Rakan Mohammad Awni Al-Dous. Israeli warplanes fired several missiles at a residential building around 11 p.m. on October 7 in the town of Abasan Al-Kabira, east of Khan Younis in the southern Gaza Strip, killing 10 Palestinians, including three children from the Abu Daqqa family, according to documentation collected by DCIP.<sup>5</sup> Around the same time, an Israeli warplane fired one missile at a residential building in the Shaboura refugee camp in the city of Rafah in the southern Gaza Strip, killing 17 Palestinians, including five children, according to documentation collected by Defense of Children International Palestine.<sup>6</sup>
4. In Khan Younis in southern Gaza, a mosque was bombed. “We ended the night prayers and suddenly the mosque was bombed. They terrorised the children, the elderly and women,” said resident Ramez Hneideq.<sup>7</sup> The targeting of places of worship is a war crime.

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<sup>1</sup> Prime Minister of Israel, X, 7 October 2023, <https://twitter.com/netanyahu/status/1710828720041119818>; <https://t.co/ckPXuXNHk0> / X (twitter.com). See, for example, Netanyahu vows to turn Gaza into rubble, The Middle East Monitor, 8 October 2023: <https://www.middleeastmonitor.com/20231008-netanyahu-vows-to-turn-gaza-into-rubble/>

<sup>2</sup> [Fears of a ground invasion of Gaza grow as Israel vows ‘mighty vengeance’ | Israel-Palestine conflict News | Al Jazeera](#)

<sup>3</sup> Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) (“ICC Rome Statute”), art 8(2)(a)(i).

<sup>4</sup> Ibid, art 8(2)(a)(iv)

<sup>5</sup> [https://www.dci-palestine.org/91\\_palestinian\\_children\\_in\\_gaza\\_killed\\_in\\_israeli\\_assault](https://www.dci-palestine.org/91_palestinian_children_in_gaza_killed_in_israeli_assault)

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

Evidence of Australian Government Minister complicity

5. On 7 October 2023, Senator Penny Wong created a post on X stating that “*Australia unequivocally condemns the attacks on Israel by Hamas including indiscriminate rocket fire on cities & civilians. We call for these attacks to stop & recognise Israel’s right to defend itself. Australia urges the exercise of restraint & protection of civilian lives.*” ([link](#)). Richard Marles MP reposted that post on 7 October 2023.

**8<sup>th</sup> OCTOBER 2023**

Evidence of international crimes by Israel

6. Statements by senior figures of the Israeli Government on this day constitute direct incitement to commit genocide, prohibited under Article 3(c) of the Genocide Convention:
  - a. On 8 October 2023, Ariel Kallner, a member of the Israeli parliament for Prime Minister Netanyahu’s Likud party demanded a repeat of the mass expulsion and murder of Arabs in 1948, known to Palestinians as the Nakba or Catastrophe. “Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 1948,” he said.<sup>8</sup>
  - b. “The price the Gaza Strip will pay will be a very heavy one that will change reality for generations,” said Defence Minister Yoav Gallant in the town of Ofakim, which suffered casualties and had hostages taken.<sup>9</sup>

The statements evince an intent to ‘deliberately inflict [on Palestinian residents of Gaza] conditions of life calculated to bring about their physical destruction in whole or in part.’ This amounts to genocide within Article 6(c) of the Rome Statute.

7. Evidence of wilful killing<sup>10</sup>, and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly<sup>11</sup> - both war crimes: round 3 a.m. on October 8, Israeli warplanes destroyed the Shabat family home and killed 14 Palestinians, including seven children, in the city of Beit Hanoun in the northern Gaza Strip, according to documentation collected by DCIP. Later in the morning, at 6:30 a.m. on October 8, an Israeli warplane fired several missiles at a residential building in the Al-Nasr neighbourhood, north of Gaza City, killing four Palestinian children and their parents, according to documentation collected by DCIP. Israeli warplanes bombed a residential building near the Al-Azam mosque in Beit Hanoun in the northern Gaza Strip, killing 20 Palestinians, including 11 children, around 12:30 p.m. on October 8, according to documentation collected by DCIP.<sup>12</sup>
8. On Sunday, 8 October 2023, Israel imposed a total siege on Gaza, cutting off its electricity, water and food supplies and preventing access to humanitarian aid.<sup>13</sup> This act appears to constitute international crimes as detailed earlier in this letter.

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<sup>8</sup> See, for example, Israeli Knesset member calls for second ‘Nakba’ amid ongoing conflict with Hamas, Yusra Asif, Al Arabiya News, 8 October 2023: <https://english.alarabiya.net/News/middle-east/2023/10/08/Israeli-Knesset-member-calls-for-second-Nakba-amid-ongoing-conflict-with-Hamas>

<sup>9</sup> [Israel retaliates after Hamas attacks, deaths pass 1,100 | Reuters](#)

<sup>10</sup> ICC Rome Statute, art 8(2)(a)(i).

<sup>11</sup> Ibid, Art 8(2)(a)(iv)

<sup>12</sup> Al-Haq, “Palestinian Organizations Call from the International Community to Stop Israel’s Reprisal against Palestinian Civilians”, 8 October 2023, available: <https://www.alhaq.org/advocacy/21800.html>; [https://www.dci-palestine.org/91\\_palestinian\\_children\\_in\\_gaza\\_killed\\_in\\_israeli\\_assault](https://www.dci-palestine.org/91_palestinian_children_in_gaza_killed_in_israeli_assault)

<sup>13</sup> Yoav Gallant, Israel’s Defence Minister, said “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed,” and “We are fighting human animals and we are

## Evidence of Australian Government Minister complicity

9. The Prime Minister stated:
  - c. *“Israel has a right to defend itself, which is what it is doing.”*<sup>14</sup>
  - d. [When asked: Are you worried about escalation here? Would you be urging any restraint?:] *“Well, of course people are worried about escalation, but Israel has a right to defend itself and it will be doing so.”*<sup>15</sup>
10. On 8 October 2023, Prime Minister Anthony Albanese created a post on X stating that *“Australia stands with our friend Israel in this time. We condemn the indiscriminate and abhorrent attacks by Hamas on Israel, its cities and civilians. We recognise Israel’s right to defend itself.”* ([link](#)). Senator Penny Wong reposted that post on 8 October 2023.
11. On 8 October 2023, Senator Penny Wong created a post on X stating that *“I have contacted Israel’s Ambassador to Australia to express our support for Israel following the horrific attacks by Hamas. Our thoughts are with those killed and injured in these attacks, their loved ones, and all others affected.”*
12. On 8 October 2023, Richard Marles MP created a post on X stating that *“the unprovoked attacks from militant Hamas on Israel are abhorrent. There is no justification for these brutal attacks on Israel. Australia calls for these attacks to end and recognise [sic] Israel’s right to defend itself. Importantly, I am advised that our ADF personnel who are serving with UNTSO are safe and accounted for”.* ([link](#))

## **9<sup>th</sup> OCTOBER 2023**

### New evidence of international crimes by Israel

13. On 9 October 2023, Israel’s Defence Minister, Yoav Gallant, ordered a “complete siege” of the Gaza Strip with “no electricity, no food, no fuel, everything is closed.” He said : “We are fighting human animals and we are acting accordingly.”<sup>16</sup> The same evinces an intent to ‘deliberately inflict [on Palestinian residents of Gaza] conditions of life calculated to bring about their physical destruction in whole or in part.’ This amounts to genocide within Article 6(c) of the Rome Statute.
14. An Israeli politician, Tally Gotliv posted on her X account: "It's time to kiss doomsday. Shooting powerful missiles without limit. Not flattening a neighborhood. Crushing and flattening Gaza. Otherwise we did nothing."<sup>17</sup>
15. Evidence of wilful killing<sup>18</sup>, and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly<sup>19</sup> - both war crimes: A residential building in Beit Lahia in the northern Gaza Strip was destroyed by Israeli warplanes, killing 13 Palestinians, including five children, around 3 a.m. on October 9, according to documentation collected by DCIP.<sup>20</sup> It is reported that since 7 October, at least 493 Palestinians,

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acting accordingly”: [https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-powerfood-or-fuel/](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-powerfood-or-fuel/)

<sup>14</sup> See, for example, Television Interview – ABC Insiders, Prime Minister of Australia, 8 October 2023: <https://www.pm.gov.au/media/television-interview-abc-insiders>

<sup>15</sup> Ibid.

<sup>16</sup> See, for example, Israeli defence minister orders ‘complete siege’ on Gaza, Al Jazeera, 9 October 2023: <https://www.aljazeera.com/program/newsfeed/2023/10/9/israeli-defence-minister-orders-complete-siege-on-gaza>

<sup>17</sup> Unilad, 10 October 2023, <https://www.unilad.com/news/tally-gotliv-faces-backlash-over-doomsday-attack-on-gaza-479029-20231010>

<sup>18</sup> Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) (“ICC Rome Statute”), art 8(2)(a)(i).

<sup>19</sup> Ibid, Art 8(2)(a)(iv)

<sup>20</sup> [https://www.dci-palestine.org/91\\_palestinian\\_children\\_in\\_gaza\\_killed\\_in\\_israeli\\_assault](https://www.dci-palestine.org/91_palestinian_children_in_gaza_killed_in_israeli_assault)

including 91 children, have been killed in the Gaza Strip, according to the Palestinian Ministry of Health in Gaza.<sup>21</sup>

Evidence of Australian Government Minister complicity

16. The Prime Minister stated:

- a. *"We've provided political support for Israel, which is what the request has been at this time."*<sup>22</sup>
- b. [When asked: As I said, many distressing images and stories and statistics coming through. Penny Wong, and I think New Zealanders, have urged restraint in the, you know, when it comes to the Israeli response. Do you agree? And what would that restraint look like?:] *"Well, no one wants to see innocent citizens hurt here, but Penny Wong simply made that point, as did Simon Birmingham, make a similar point. What we have seen, though, is a brutal activity. More than a thousand Hamas fighters cross into southern Israel and engage in indiscriminate killing and murder, and also capture a number of people, including women and children. And I think it is very distressing, the fact that people have been held, essentially as human hostages in Gaza, and it is important that they be released. ....I've made the point that Israel has a right to defend itself from this action and I think that anyone who looks at what's occurred here, will certainly agree with that position."*<sup>23</sup>

17. At the time of this comment, the indiscriminate bombing of residential areas in Gaza had already resulted in the deaths of entire families and many children. The Prime Minister would certainly have been aware of this. The Prime Minister would also have been aware of Israeli ministerial comments demonstrating genocidal intent. His response to the question posed to him effectively refused to urge restraint upon Israel. In so refusing, he impliedly endorsed the killing of Palestinian civilians in pursuit of Israel's alleged right to defend itself.

18. The Prime Minister has further stated:

- a. [When asked: if asked will we send aid or military equipment to Israel?:] *"...I didn't have to be asked to express political support at this time. I just did it out of gut instinct."*<sup>24</sup>
- b. *"As you would expect, Israel has a right to defend itself. But you will see, you've already seen horrific numbers, so more than six hundred Israelis killed in the initial action by Hamas and hundreds of people killed in Gaza as well. This is of real concern, but Hamas bear the responsibility for this."* [emphasis added]<sup>25</sup>
- c. [When asked, Penny Wong is also urging all parties to exercise restraint when it comes to protecting civilian lives. Do you echo that plea?:] *"Of course civilians shouldn't be targeted in this, and that is what is so horrific about Hamas's indiscriminate actions that took place."*<sup>26</sup>

**10<sup>th</sup> OCTOBER 2023**

New evidence of international crimes by Israel

19. On 10 October 2023, Major General Ghassan Alian, Coordinator of the Government in the Territories (COGAT), proclaimed that, "... the citizens of Gaza are celebrating. Human beasts are dealt with accordingly... Israel has imposed a total blockade on Gaza, no electricity, no water,

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<sup>21</sup> Ibid.

<sup>22</sup> See, for example, Television Interview – Today, Prime Minister of Australia, 9 October 2023:

<https://www.pm.gov.au/media/television-interview-today-1>

<sup>23</sup> [20231009 Radio interview - ABC Adelaide - Prime Minister of Australia](#)

<sup>24</sup> [20231009 Radio interview - 2GB Sydney - Prime Minister of Australia](#)

<sup>25</sup> [20231009 Television interview - ABC Breakfast - Prime Minister of Australia](#)

<sup>26</sup> Ibid.

just damage. You wanted hell, you will get hell.<sup>27</sup> The statement evinces an intent to ‘deliberately inflict [on Palestinian residents of Gaza] conditions of life calculated to bring about their physical destruction in whole or in part.’ This amounts to genocide within Article 6(c) of the Rome Statute.

20. IDF spokesperson R Adm Daniel Hagari said “hundreds of tons of bombs” had already been dropped on the tiny strip, adding that “the emphasis is on damage and not on accuracy.”<sup>28</sup>
21. Evidence of the war crime of employing asphyxiating, poisonous or other gases and all analogous liquids, materials or devices<sup>29</sup>: Human Rights Watch has verified videos taken in Lebanon on October 10 and Gaza on Oct. 11 showing “multiple airbursts of artillery-fired white phosphorus over the Gaza City port and two rural locations along the Israel-Lebanon border”<sup>30</sup>.
  - a. Under the United Nation’s Convention on Certain Conventional Weapons, it is illegal to drop incendiary weapons on “concentrations of civilians.” Israel has not ratified Protocol III of this Convention.<sup>31</sup>
  - b. White phosphorus is a waxy solid that burns easily and reacts rapidly with oxygen. It is used in chemical manufacturing and smoke munitions by the military. White phosphorus is dangerous because it can cause fast-spreading fires that are hard to extinguish, and it sticks to skin and clothing, causing severe burns that go down to the bone . Exposure to white phosphorus may also cause liver, kidney, heart, lung, or bone damage, and death.

#### Evidence of Australian Government Minister complicity

22. The Prime Minister stated:

- a. [When asked, it hasn't got to this point yet, Prime Minister, but if Israel wanted some kind, you know, coalition of likeminded nations to play some sort of military role, be it a symbolic one or something more substantial, would Australia line up behind something like that?:] *“Well, there's no suggestion that that is what's envisaged. What Israel is not asking for, but what they're receiving without having to ask, because they shouldn't have to, is the political support of the world to call this out, this atrocity for what it was. And that is what we did. And that's what other democratic Western nations, of course, have done.”*<sup>32</sup>

23. Deputy Prime Minister and Minister for Defence Richard Marles made the following comments:

- a. [When asked: the Israeli Defence Minister has ordered the complete siege of Gaza, the cutting off of food, fuel and electricity. Do you think this is justified?] *“Well, I think Israel is justified in acting to defend itself in this moment. I think it's justified in seeking to protect and liberate its citizens and to act against Hamas. I mean, this is an incident which is being wrought upon innocent civilians and it is an act of terrorism. And in this moment, that Israel is acting in a way which is seeking to defend itself, I think we can understand.”*<sup>33</sup>
- b. [When asked: but does that right to defend itself extend to collective punishment? How far does that right go?] *“I'm not— we are not sitting in the chair of the Israeli*

<sup>27</sup> See, for example, Major General Ghassan Alian, X, 10 October 2023; [https://ardd-jo.org/news/stop-genocide-in-gaza-statement-of-the-global-network-on-the-question-of-palestine/#:~:text=Major%20General%20Ghassan%20Alian%2C%20Coordinator,%2C%20no%20water%2C%20just%20damage](https://ardd-jo.org/news/stop-genocide-in-gaza-statement-of-the-global-network-on-the-question-of-palestine/#:~:text=Major%20General%20Ghassan%20Alian%2C%20Coordinator,%2C%20no%20water%2C%20just%20damage;);

<sup>28</sup> ‘Emphasis is on damage, not accuracy’: ground offensive into Gaza seems imminent | Israel | The Guardian

<sup>29</sup> ICC Rome Statute, Art 8(2)(b)(xviii):

<sup>30</sup> See, for example, Human Rights Watch says Israel used white phosphorus in Gaza, Lebanon, Reuters, 14 October 2023: <https://www.reuters.com/world/middle-east/human-rights-watch-says-israel-used-white-phosphorous-gaza-lebanon-2023-10-12/> ;

<sup>31</sup> What is white phosphorus — and why is it so controversial? Israel accused of using it in Gaza (yahoo.com)

<sup>32</sup> 20231010 Radio interview - FiveAA Adelaide - Prime Minister of Australia

<sup>33</sup> 20231010 Radio Interview, ABC Perth Drive - Defence Ministers

*Defence Minister now. And so the particular judgments as to how this is pursued is really a matter that Israel is executing as we speak. But we can't take our eye away from the fact that what we've seen here is an act of terrorism wrought upon innocent people, which, at this point, has seen the loss of more than 900 lives. This is a tragic incident and in that event, Israel does have a right to defend itself.*"<sup>34</sup>

- c. [When asked: You and the Prime Minister, and indeed, you just made it clear there that you believe Israel has a right to defend itself. How far do you believe that right goes?] *"Well, it's obviously difficult to answer that question now, and we are considering these events within, really a matter of hours of the incidents on the weekend. What's clear is that, given what occurred on a weekend, given that this was clearly an act of terror and that we're not talking about combatants here, we're talking about innocent people who are going about their lives, who lost their lives at music festivals, at home, in their villages. That's what happened. Hamas stands condemned in this moment and they are an organisation that is registered as a terrorist organisation by successive Australian governments. In this moment, Israel has a right to defend itself. Now, I'm not sitting in the chair in Israel and they need to make the decisions they need to make, in terms of how to deal with what is a deeply complex and difficult situation for them. But that they have a right to defend themselves in this moment is completely clear.*"<sup>35</sup>
- d. [When asked: I guess my question, though, relates to the Israeli Prime Minister. He's vowed to change the Middle East. He has said what we will do to our enemies in the coming days will reverberate with them for generations. You talk about innocent people in Israel going about their lives and then being the subject to these horrific terror attacks. There are also innocent people in the territories in Gaza who also have been going about their lives and suddenly found their apartment building disintegrated.] *"Well, I mean, we understand that the events that are playing out in Israel and in the Middle East, that there is a long history and a context, but nothing justifies or excuses the acts that we saw undertaken by Hamas over the course of the weekend. I mean, nothing excuses that kind of terrorist activity wrought against innocent people. And it's really important that in this moment that that be called out and spoken for what it is. And that is why we've been really clear in making clear to the Australian people, and indeed to Israel, that we stand in solidarity with the people of Israel in this moment.*"<sup>36</sup>
- e. [When asked: At that event last night, Senator Paterson, the Shadow Home Affairs Minister, said that even if global support wavers, Australia's support for Israel would not. I'm quoting him now, "Israel cannot live any longer with the existential risk of an event like this happening again. The response must be decisive and when that response comes, we will stand with you through what needs to be done because we are not fair weather friends." Do you support that sentiment? And I just go back to the point, and I accept what you're saying, that this is unacceptable terrorism and we stand with Israel, in your words. But at what point do you urge restraint? At what point is standing with Israel no longer palatable to the Australian government? Or is there no point?] *"Well, last night I made clear, as I make clear now, that Israel has a right to exist in peace and with security. And I might say, the Palestinian people have a right to exist with peace and security as well. But Israel has a right to live and to exist with peace and security. What we saw was that peace and security shattered over the course of the weekend. And last night I made clear, and again, make it clear now, we absolutely understand that Israel has a right to defend itself. It has a right to protect and to liberate its citizens, particularly referring to those who've been taken hostage, and it has a right to act against Hamas. Now, they are the rights that belong to Israel in this moment, given what has occurred over the course of the weekend.*

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<sup>34</sup> Ibid.

<sup>35</sup> [20231010 Radio interview, ABC Melbourne Drive - Defence Ministers](#)

<sup>36</sup> Ibid.

*And in that, we absolutely respect that. And as I say, we stand in solidarity with Israel and its people.*"<sup>37</sup>

- f. [When asked: Is cutting off power to the Gaza Strip, which Israel has done, should that be considered a war crime?] *"Right now, our focus is on showing solidarity with the people of Israel in the face of this terrorist attack. We acknowledge Israel's right to defend itself and we very much acknowledge Israel's right to seek the protection, and indeed the liberation of citizens and to act against Hamas."*<sup>38</sup>

24. Minister for Foreign Affairs, Penny Wong has made the following public statements:

- a. [When asked: Does that right to defend itself extend to what looks like collective punishment?"] *"Well, I think it's always very difficult from over here to make judgments about what security approach other countries take. We've said Israel has a right to defend itself."*<sup>39</sup>
- b. [When asked about whether military support would be provided to Israel:] *"We have offered political solidarity, our continued support and we are reaching out and engaging with other parties in the region."*<sup>40</sup>
- c. [When asked: the Israeli Defence Minister has ordered the complete siege of Gaza, the cutting off of food, fuel and electricity. Do you think that level of response is justified?] *"Well, Israel has a right to defend itself and this was an abhorrent attack. And the taking of hostages, the attacks on civilians, the sorts of images, awful images that we are seeing, reminds us of the security situation that Israel confronts. This is really a dreadful situation, a devastating loss of life. And I think we should all be very clear that these attacks are abhorrent. And Australia does very clearly, as I said to the Foreign Minister, Israeli Foreign Minister, when I spoke to him, we do stand in solidarity with Israel and we recognise and support its right to defend itself."* [When asked: Does that right to defend itself extend to what looks like collective punishment?] *"Well, I think it's always very difficult from over here to make judgments about what security approach other countries take. We've said Israel has a right to defend itself. We call for all hostages to be released. But we also have a principal position which we would advocate to all nations and all groups in all situations, which is we would urge for the protection of civilian lives and restraint, which ensures, as far as possible, that that occurs."*<sup>41</sup> [emphasis added]
- d. [When asked: But did you say that Israel should exercise restraint?] *"No, no, I said that, I think the tweet said something like, we call for restraint and the protection of civilian lives. And I think that's an unremarkable point, frankly. But, look, this is, and I want to respond to some of what we've seen overnight, and this has been an abhorrent attack. I know that the images have been terrifying. We know that we've seen hundreds of Israelis killed or more. We've seen hostages taken and civilians targeted. So, Australia calls for hostages to be returned. We condemn Hamas' abhorrent attacks and we stand with Israel and we recognise its right to defend itself."*<sup>42</sup>

## **11th OCTOBER 2023**

### *New evidence of international crimes by Israel*

25. "The State of Israel has no choice but to turn Gaza into a place that is temporarily or permanently impossible to live in," reservist Major General Giora Eiland told Israeli media. "Creating a severe humanitarian crisis in Gaza is a necessary means to achieve the goal [of eliminating Hamas and

<sup>37</sup> [20231010 Radio interview, ABC Melbourne Drive - Defence Ministers](#)

<sup>38</sup> [20231010 Press conference, Perth WA - Defence Ministers](#)

<sup>39</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/abc-radio-national-patricia-karvelas>

<sup>40</sup> [20231010 ABC Radio National with Patricia Karvelas - Australian Minister for Foreign Affairs](#)

<sup>41</sup> Ibid.

<sup>42</sup> [20231010 ABC Radio Adelaide with Stacey Lee and Nikolai Beilharz - Australian Minister for Foreign Affairs](#)

their support base]. Gaza will become a place where no human being can exist.”<sup>43</sup> The statement evinces a clear intent to ‘deliberately inflict [on Palestinian residents of Gaza] conditions of life calculated to bring about their physical destruction in whole or in part.’ This amounts to genocide within Article 6(c) of the Rome Statute.

26. It is reported by the Associated Press that:

In a new tactic, Israel is warning civilians to evacuate whole Gaza neighborhoods, rather than just individual buildings, then levelling large swaths in waves of airstrikes.

Israel’s tone has changed as well. In past conflicts, its military insisted on the precision of strikes in Gaza, trying to ward off criticism over civilian deaths. This time, military briefings emphasize the destruction being wreaked.

“We will not allow a reality in which Israeli children are murdered,” Defense Minister Gallant said in a meeting with soldiers near the southern border on Tuesday. “I have removed every restriction — we will eliminate anyone who fights us, and use every measure at our disposal.”

Even with the evacuation warnings, Palestinians say some are unable to escape or have nowhere to go, and that entire families have been crushed under rubble. Other times, strikes come with no warning at all, survivors say.<sup>44</sup>

#### Evidence of Australian Government Minister complicity

27. The Prime Minister stated:

- a. [When asked: And, Prime Minister, you've made it very clear, as have other members of the government, that we stand by Israel and its right to protect itself. I'm sure that you would have heard the Israeli Defence Minister, Yoav Gallant, and time is of the essence so I'm not going to play what he said. But to quote him, 'we will eliminate everything'. The Israeli Prime Minister, Benjamin Netanyahu, has promised to turn Gaza into, quote, 'a deserted island'. Do we stand shoulder to shoulder with Israel on the stated views of elimination?:] *“Look, what our position is, I speak for myself and for Australia. And what we regard is the actions of Hamas in initiating this issue that we're dealing with is the responsibility of Hamas. Israel will defend itself. We, of course, always are concerned about any civilian casualties, of course, is a concern. And that is what drove the concern about what occurred on the weekend where you had the slaughter of people who were going about their daily life, including the hundreds who were murdered attending a music festival. [When pressed, So, is it an unlimited stand, shoulder to shoulder? I'm just trying to work out if there is a point at which you urge restraint:] “I use my own language, Ali, and I've just used it.”<sup>45</sup>*
- b. *“What is happening now rests firmly with Hamas and the actions that they have taken.”<sup>46</sup>*

This comment reflects an overall messaging across the Australian Government that Israel is not responsible or accountable for any international crimes it commits and that any such crimes are a justified response to Hamas’ actions on 7 October 2023. Such position is not consistent with

<sup>43</sup> <https://www.ynet.co.il/yedioth/article/yokra13625377>

<sup>44</sup> [Israel’s Netanyahu says Hamas militants beheaded soldiers, raped women in their attack on Israel | PBS NewsHour](#)

<sup>45</sup> [20231011 Radio interview - ABC Radio Melbourne Drive - Prime Minister of Australia](#)

<sup>47</sup> [20231011 Remarks to the Jewish community in St Kilda - Prime Minister of Australia](#)



international law. For the reasons we have set out above, it exposes you to investigation and prosecution by the ICC.

- c. *“The Government and the people of Australia condemn this attack by Hamas... We will stand with Israel. We always will.”<sup>47</sup>*

The comment at c. above evinces an intention on your part to provide unconditional support to Israel regardless of what international crimes Israel has committed or may commit.

28. Deputy Prime Minister and Minister for Defence Richard Marles made the following comments:
- a. [When asked if Australia supports Israel attacking Gaza:] *“We absolutely support Israel's right to move on Hamas and we've made that really clear. I mean, Israel's in a position right now where they need both to protect their own citizens, but to liberate them. I mean, they are facing the appalling situation where they have a significant number of their citizens being held hostage in the Gaza Strip as we speak. So, of course Israel has a right to act and we've been making that clear from the get go.”<sup>48</sup>*
- b. [When asked: So, those initial calls for restraint are no longer operable?] *“I mean, we're talking about comments that were made right at the start. As this has unfolded it is absolutely clear that Israel has a perfect right to defend itself and to act against Hamas. A circumstance where there are Israeli citizens who are held hostage in Gaza right now, I mean, it is an unspeakable position and obviously any government in the situation that Israel was in right now would be doing everything it could to seek to protect and to liberate its citizens.”<sup>49</sup>*

29. Minister for Foreign Affairs, Penny Wong has made the following public statements:

- a. *“We remain as steadfast and unwavering as ever in our support for Israel.”<sup>50</sup>*

## **12<sup>th</sup> OCTOBER 2023**

### *New evidence of international crimes by Israel*

30. On 12 October 2023, in an echo of the US after 9/11, the IDF posted on X: “You either stand with Israel or you stand with terrorism”.<sup>51</sup> The same likened ordinary Palestinian civilians who might be said to be justified in not standing with Israel (the illegal occupier of their land) to those who “stand with terrorism.” It foreshadowed an intent by the IDF to kill Palestinian civilians simply because they may not “stand with Israel.”
31. In an interview with Sky News, former Israeli Prime Minister, Naftali Bennett, was asked about the innocent Palestinian civilians in Gaza hospitals on life support and babies in incubators that will have to be turned off because Israel cut the power. Mr Bennett responded: “are you seriously keep on asking me about civilians; what’s wrong with you?! Have you not seen what happened? We’re fighting Nazis .... I’m not going to feed electricity and water to my enemies.”<sup>52</sup>

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<sup>47</sup> [20231011 Remarks to the Jewish community in St Kilda - Prime Minister of Australia](#)

<sup>48</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-11/radio-interview-neil-mitchell-3aw-mornings>

<sup>49</sup> Ibid.

<sup>50</sup> [20231011 Remarks to the Australia-Israel Chamber of Commerce](#)

<sup>51</sup> Israel Defence Forces, X, 12 October 2023, <https://twitter.com/IDF/status/1712228876158394775?s=20>; The language being used to describe Palestinians is genocidal, The Guardian, 16 October 2023:

<https://www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal>

<sup>52</sup> Sky News, 13 October 2023, [https://www.youtube.com/watch?v=ewLx9XN8sLc&ab\\_channel=SkyNews](https://www.youtube.com/watch?v=ewLx9XN8sLc&ab_channel=SkyNews)

32. On 12 October 2023, Israel announced it had dropped 6,000 bombs weighing 4,000 tonnes on Gaza in the previous six days, killing more than 1,400 people.<sup>53</sup> The Australian Government would have known that conducting further bombardment of the same nature would have the same objective and likely the same end and that such bombardment may constitute international crimes.

Evidence of Australian Government Minister complicity

33. Minister for Home Affairs, Clare O’Neil has made the following statements:
- a. *“I think what has happened here is just so brutal in its act of violence, the killing of innocent men, women and children, and it's important for Australians to also understand that Hamas, the perpetrators of this violence, a listed terrorist organisation by the Australian Government, have also committed a crime against the Palestinian people, because many innocent people will die on the other side of this conflict, and all of this is violence begetting more violence. No one will win from this situation.”*<sup>54</sup>
  - b. *“There is no question that Palestinians will be affected by the actions here, and I say again Hamas have committed a disgraceful atrocity against the Israeli people. This atrocity will cause violence against Palestinians.”*<sup>55</sup>

By saying this ‘atrocity [committed against Israeli people on 7 October 2023] will cause violence against Palestinians’ and ‘many innocent [Palestinian] people will die’ as a result of Hamas’ actions, plainly implies that Australia agrees or adopts the position that Israel is entitled to pursue the killing of innocent Palestinians. The Minister is aware of what will happen and does not urge restraint.

**13<sup>th</sup> OCTOBER 2023**

New evidence of international crimes by Israel

34. On 13 October 2023, Israeli President Isaac Herzog said, “It is an entire nation out there that is responsible. It’s not true, this rhetoric about civilians [being] not aware, not involved. It’s absolutely not true. They could have risen up. They could have fought against that evil regime which took over Gaza in a coup d’etat.”<sup>56</sup> The same demonstrated an intention to punish all Palestinian civilians, that is by killing as many as possible. The same clearly falls within Article 6(a) definition of genocide in the Rome Statute (“Killing members of the group”).
35. On 13 October 2023, Israel ordered the evacuation of 1.1 million Palestinians in Gaza<sup>57</sup>, which many families are not able to comply with due to fuel shortages, the presence of elderly, disabled, pregnant women and small children, and the dangers presented by continued bombardment. This is evidence of
- a. the war crime of unlawful deportation or transfer or unlawful confinement;<sup>58</sup>

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<sup>53</sup> Omar Abdel-Baqi, “Israeli Air Force Says It Has Dropped 6,000 Bombs on Gaza (14 October 2023) <https://www.wsj.com/livecoverage/israel-hamas-war-gaza-strip/card/israeli-air-force-says-it-has-dropped-6-000-bombs-on-gaza-QK1aSnupiGqytMVO86PU>

<sup>54</sup> [20231012 Interview with Lisa Millar](#)

<sup>55</sup> Ibid.

<sup>56</sup> See, for example, Israeli President says Gazans could have risen up to fight Hamas, ITV, 13 October 2023: <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas> ‘No Innocent Civilians in Gaza’, Israel President Says as Northern Gaza Struggles to Flee Israeli Bombs’ The Wire, 14 October 2023: <https://thewire.in/world/northern-gaza-israel-palestine-conflict>

<sup>57</sup> Al-Haq, “Urgent: Israel’s Evacuation Order to 1,1 Million Palestinians in Gaza is Direct Forcible Transfer, Urgent Intervention is Needed”, 13 October 2023, available at: <https://www.alhaq.org/advocacy/21896.html>.

<sup>58</sup> Ibid, Art 8(2)(a)(vii)

- b. Crimes against Humanity<sup>59</sup> include forcible transfer of population committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.
36. World Health Organisation published a statement on 13 October 2023 joining the wider United Nations in “appealing to Israel to immediately rescind orders for the evacuation of over 1 million people living north of Wadi Gaza. A mass evacuation would be disastrous—for patients, health workers and other civilians left behind or caught in the mass movement:

*“With ongoing airstrikes and closed borders, civilians have no safe place to go. Almost half of the population of Gaza is under 18 years of age. With dwindling supplies of safe food, clean water, health services, and without adequate shelter, children and adults, including the elderly, will all be at heightened risk of disease.”<sup>60</sup>*

## **14 OCTOBER 2023**

### *New evidence of international crimes by Israel*

37. A video of Ezra Yachin goes viral, including evidence of public incitement to genocide. He is an Israeli army veteran who was involved in a 1948 massacre of Palestinian civilians. In his motivational address to Israeli army reservists, he says, "Be triumphant and finish them off and don't leave anyone behind. Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live. We will witness things we've never dreamed of. Let them drop bombs on them and erase them."<sup>61</sup>

## **15<sup>th</sup> OCTOBER 2023**

38. On 15 October 2023, Eyal Golan, a popular Israeli singer, repeated on Israeli television the characterization of the people of Gaza as ‘human animals’ adding: “We must erase Gaza and not leave a single person alive there.”<sup>62</sup>

### *Evidence of Australian Government Minister complicity*

39. Deputy Prime Minister and Minister for Defence Richard Marles made the following comments:
- a. [When asked, do you think Israel has a right now to do what it's done in cutting off fuel, food, and water supplies to the civilians in Gaza?] *“Well Israel does have a right to defend itself and in doing that Israel does have a right to act against Hamas. I mean what we saw last weekend was an act of terror and an act of terror that was wrought upon innocent people and in that sense you know what we witnessed last weekend was murder and it's an absolute tragedy what is now playing out. It is a tragedy for the innocent Israelis who have been a victim of this but it is obviously a tragedy for innocent Palestinians who now find themselves in the middle of this as well. We join the call of other nations in saying to Israel that in having a right to defend itself, obviously it needs to do that in a way that acts in accordance with the rules of law [sic] and that's very clear and indeed Israel have made comments that that is how they will proceed.”* [When pressed: Are they doing that right now? Acting within the rules of war?] *“Well I'm not about to cast a judgment on what they are doing now and that's the way I would answer that question-”* [When the journalist interjects and asks: I'm puzzled by that, you can't say that Israel is acting within the rules of war right now?] *“I'm saying that I think Israel is acting within the rules of*

<sup>59</sup> ICC Rome Statute, art 7.

<sup>60</sup> <https://www.who.int/news/item/13-10-2023-who-pleads-for-immediate-reversal-of-gaza-evacuation-order-to-protect-health-and-reduce-suffering>

<sup>61</sup> [Israel-Palestine war: Israeli veteran, 95, rallies troops to 'erase' Palestinian children | Middle East Eye](#)

<sup>62</sup> ["למחוק את עזה, לא להשאיר שם בן אדם אחד" - אייל גולן במסר להדשות 14 - YouTube](#) cited in [A Letter to the ICC Prosecutor From Israeli Jews for Decolonization – Israeli Jews Call: \(wordpress.com\)](#)

*war, I'm not casting a negative judgment on what they're doing but I guess I'm making this point, I'm not sitting in their control room either I do not have all the information that is available to me that they will have to them but it is very important that as Israel walks forward, while having the right to defend itself and that means acting against Hamas, they do act within the rules of war.*"<sup>63</sup>

40. Minister for Foreign Affairs, Penny Wong has made the following public statements:

- a. [When asked: You've talked about opening up supply channels into Gaza. Do you think that Israel's gone beyond self-defence in cutting off food, water, energy supplies?] *"Well, look, I think that we should articulate the principled position about observation of international humanitarian law. We also understand Israel has been subjected to an attack. As others have said, it's not a war that they sought, they were attacked, a heinous attack by Hamas, and Israel's right to defend itself and secure its borders is legitimate. But like the US President, I would also urge for the observation of international humanitarian law, because whether - civilians on all sides are being harmed, and that is a very distressing situation."* [When pressed: Some of those protesters are saying the Australian Government shouldn't give Israel a blank cheque. What do you say to that?] *"I think I'd refer you to my comments, which I think are principled and clear about the position Australia takes."*<sup>64</sup>

41. The Minister's statement that this a war that Israel has not sought 'covers up' the ongoing unlawful occupation and blockade of Gaza, and clearly seeks to deflect responsibility for Israel under international law. While the Minister states that 'we should articulate the principled position about observation of international humanitarian law', she refuses to state that Israel has gone beyond lawful self-defence, impliedly endorsing Israel's decision to cut off food, water and energy supplies to the whole of Gaza. The Minister has impliedly endorsed collective punishment and conduct which will likely be found to be war crimes and crimes against humanity.

42. On 15 October 2023, Senator Penny Wong created a post on X which stated that *"Australia is providing an initial \$10 million in humanitarian assistance for civilians affected by the conflict in Gaza. We will continue to monitor and assess the humanitarian situation and stand ready to provide further support."* ([link](#)).

43. This statement did not acknowledge the reason for the need for humanitarian assistance to be provided, that is, the repeated and indiscriminate bombing of Palestinian civilians, housing and infrastructure by the Israeli government.

## **16<sup>th</sup> OCTOBER 2023**

### *New evidence of international crimes by Israel*

44. On 16 October 2023, in a speech to the Israeli Parliament, Prime Minister Netanyahu said, "This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle."<sup>65</sup> He also tweeted this quote but removed it after significant backlash.<sup>66</sup> At least 1,000 children in Gaza have died since the conflict began.

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<sup>63</sup> [20231015 IN FULL: Insiders Special Edition: Voice referendum & Israel-Gaza conflict | ABC News](#)

<sup>64</sup> [20231015 Doorstop, Adelaide - Australian Minister for Foreign Affairs](#)

<sup>65</sup> Excerpt from PM Netanyahu's Remarks at the Opening of the Winter Assembly of the 25<sup>th</sup> Knesset's Second Session, Government Services and Information, 16 October 2023:

<https://www.gov.il/en/departments/news/event-knesset25-161023#:~:text=%22This%20is%20a%20moment%20of,Israel%20once%20and%20for%20all>

<sup>66</sup> See, for example, Israeli PM office deletes 'children of darkness' post after backlash over 'dehumanizing, genocidal' language, Daily Dot, 17 October 2023: <https://www.dailydot.com/debug/israel-pm-tweet-children-of-darkness/>

45. On 16 October 2023, Israel’s Ambassador to the UK, Tzipi Hotovely, said on Sky News, “There is no humanitarian crisis because there is no Israel in charge of the safety of the Israelis. Hamas is in charge of the safety of the Palestinians.” The journalist said: “We’ve been showing pictures this morning that would illustrate that there is a humanitarian crisis in Gaza.” Hotovely redirected the conversation by posing a poignant question to Burley about her own family: “Can I ask you something? Are you a mother.” The journalist confirmed she was. With that the ambassador continued: “What would you think if your children would have been executed in front of your eyes? Would you expect your government to think about those Nazis committing those crimes and to say...” The journalist attempted but failed to interject. Hotovely emphasised her point, stating, “First of all, we need to protect the enemy and then to protect my children? Your children come as a priority to your Prime Minister.”
46. It is reported that 600000 Gazans have fled south following Israel’s occupation orders.<sup>67</sup> Former vice Prime Minister of Israel (and foreign and justice minister), Tzipi Livni tells The 7:30 Report:
47. When asked, What about those people who elect to stay behind or who are too sick to move, doctors who are looking after them in hospitals: “We are trying to do our best to minimise the damage to civilians. I cannot deal right now with each and every specific question or situation and there are different possibilities for them to leave to find help in other places. But as long as Hamas is calling or forcing them to stay there, they are responsible. I mean the loss of civilian life is devastating, no matter if it is Palestinian or Israeli but the responsibility lies on Hamas.”

Evidence of Australian Government Minister complicity

48. The Prime Minister posted an edited video excerpt from a speech made in Parliament on that date on X, Instagram and ([X link](#), [Instagram link](#) and [Facebook link](#)). The transcript of the full speech can be found via ([this link](#)).

Note: The video compilation omitted parts of the speech that (amongst other things):

- a. spoke directly to the Jewish community, via a repeated statement that “you are not alone; your fellow Australians stand with you”;
- b. repeated the following statements by United States of America President Joe Biden that:
  - i. *“Hamas does not stand for the Palestinian people's right to dignity and self-determination. Its stated purpose is the annihilation of the State of Israel and the murder of Jewish people.*
  - ii. *They [Hamas] use Palestinian civilians as human shields.*
  - iii. *Hamas offers nothing but terror and bloodshed with no regard to who pays the price.”*
- c. stated “we should be very clear that it is Hamas that is the enemy, not the Palestinian people. The Palestinian people are suffering greatly, and this suffering has impacted on generations of Palestinians.”; and
- d. acknowledged “the humanitarian situation in the Gaza strip, which is home to two million people, is deteriorating rapidly. We are monitoring the situation closely and we support the work of the United Nations, the United States, Israel and Egypt to establish safe passage for Gaza civilians. There is no question that Israel has the right to defend itself against a terrorist organisation and to take strong action against it, but we join the calls of President Biden and other partners for Israel to operate by the rules of war.”;

49. Minister for Foreign Affairs, Penny Wong has made the following public statements:

<sup>67</sup> <https://www.abc.net.au/news/2023-10-16/israel-not-responsible-civilian-safety-gaza-tzipi-livni-730/102984244>

- a. *“Australia stands with Israel, and always will.”*<sup>68</sup>

This statement expresses unconditional support for Israel, regardless of what crimes it has already committed or is about to commit.

- b. *“Averting regional escalation matters to Israel, the people of the region and to the world. This will be one of Israel's many considerations as it determines how it pursues its legitimate military objectives. We recognise this will be challenging. Hamas has burrowed itself in Gaza's civilian population. It uses the Palestinian people and the hostages it has taken as human shields, and seeks to prevent the departure of foreign nationals.”*<sup>69</sup>

This statement impliedly endorses Israel’s international crimes by seeking to justify them in a manner that has no basis in international law. At this point there is strong evidence of civilian infrastructure being bombed without warning or with full knowledge by Israel that vulnerable people cannot be evacuated in time, and whole neighbourhoods being bombed.

## **17<sup>th</sup> OCTOBER 2023**

### **New evidence of international crimes by Israel**

50. A statement by the United Nations on 17 October 2023 reported that a staggering 4,200 Palestinian people have been killed, over one million people displaced in just ten days, and large areas in the Gaza Strip reduced to rubble. It also explained that there have been violations of international law:

Military operations show no signs of abating, the continued siege on Gaza is affecting water supply, food, medicine and other basic needs, and there are daily indications of violations of the laws of war and international human rights law.

....

With numerous health facilities hit by bombardment and others beyond breaking point, there are serious concerns about the accessibility of medical care for the many thousands injured – and for the estimated 50,000 pregnant women, as well as people with chronic physical and mental health issues. The current hostilities are compounding already limited enjoyment of the right to health resulting from the ongoing blockade of Gaza. Attacks against medical facilities, medical personnel and the wounded and sick are prohibited under international humanitarian law.

Appalling reports that civilians attempting to relocate to southern Gaza were struck and killed by an explosive weapon must be independently and thoroughly investigated, as must all allegations of serious violations of international humanitarian law.

We urge the Israeli forces to avoid targeting civilians and civilian objects or conducting area bombardments, indiscriminate or disproportionate attacks, and to take precautions to avoid, and in any event to minimize, loss of civilian life, injury to civilians and damage to civilian objects.

Those who managed to comply with the Israeli authorities’ order to evacuate are now trapped in the south of the Gaza Strip, with scant shelter, fast-depleting food supplies, little or no access to clean water, sanitation, medicine and other basic needs.

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<sup>68</sup> [20231016 Speech to the Senate - Hamas attacks on Israel - Senate motion, Parliament House - Australian Minister for Foreign Affairs](#)

<sup>69</sup> Ibid.

So far, around 400,000 IDPs are sheltered in various locations, several in UNRWA buildings. International law requires that any lawful temporary evacuation by Israel, as the occupying power, of an area on the basis of the security of the population or imperative military reasons, must be accompanied by the provision of proper accommodation for all evacuees, undertaken under satisfactory conditions of hygiene, health, safety and nutrition. There appears to have been no attempt by Israel to ensure this for the 1.1 million civilians ordered to move. We are concerned that this order combined with the imposition of a “complete siege” on Gaza may not be considered as lawful temporary evacuation and would therefore amount to a forcible transfer of civilians – in breach of international law [emphasis added].<sup>70</sup>

51. It’s widely reported that Israel is refusing calls to allow access for humanitarian assistance, in line with its total siege/blockade of Gaza.<sup>71</sup> This is evidence of a Crime against Humanity,<sup>72</sup> which include torture or other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.
52. There was evidence of intentionally directing attacks against ... hospitals and places where the sick and wounded are collected:<sup>73</sup> Israel’s deliberate targeting of Al-Ahli Hospitals resulting in death of many Palestinians.
  - a. The event led to condemnation by Mike Ryan, executive director of WHO’s Health Emergencies Programme, stating it was “inhumane” to leave Gaza’s health workers with the dilemma of caring for their patients or fleeing to save their own lives. He said doctors and nurses were choosing their patients over themselves. “It is absolutely clear to all sides of this conflict where the health facilities are,” Ryan said. “It is absolutely clear healthcare is not a target... That is enshrined in international humanitarian law. And we’re seeing this breached again and again and again over the last week. And it has to stop. It must stop.”<sup>74</sup>

#### Evidence of Australian Government Minister complicity

53. The Defence Minister stated,

- a. When asked, the Greens leader, Adam Bandt, moved an amendment to accuse Israel of war crimes. Were you disturbed by that move yesterday?: *We obviously voted against that, and yes I think it really couldn't miss this moment more. I mean, what we are seeing is a country in Israel which does have a right to defend itself. In light of what occurred the weekend before last... And really the position that the Greens took yesterday was completely despicable.*<sup>75</sup>

54. The Home Affairs Minister Clare O’Neil MP shared a video compilation, being an excerpt of a speech made in Parliament, presumably that same day. She stated (amongst other things):

- a. *“I cannot express strongly enough how powerfully our government condemns the violence that lead to the unnecessary deaths of men, women and children in Israel”;*

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<sup>70</sup> United Nations (17 October 2023), <https://www.un.org/unispal/document/4200-people-killed-over-one-million-people-displaced-in-just-10-days-ohchr-briefing/>

<sup>71</sup> <https://www.reuters.com/world/egypt-us-israel-agree-ceasefire-southern-gaza-opening-rafah-crossing-0600-gmt-2023-10-16/>

<sup>72</sup> ICC Rome Statute, art 7.

<sup>73</sup> Ibid, Art 8(2)(b)(ix)

<sup>74</sup> See, for example, Joe Biden visit aid plan latest updates, The Guardian, 17 October 2023: <https://www.theguardian.com/world/live/2023/oct/17/israel-hamas-war-live-gaza-city-update-news-today-joe-biden-visit-aid-plan-latest-updates>

<sup>75</sup> [20231017 Radio Interview, The Ben Fordham Breakfast Show - Defence Ministers](https://www.20231017radiointerview.com/2023/10/17/the-ben-fordham-breakfast-show-defence-ministers/)

- b. *“This is a terrorist attack which is profoundly wrong, inhuman [sic], and the vile way in which innocent people who have no role in the conflict were treated is just beyond belief”;*
- c. *“What we saw is a bunch of incidents which echo the darkest days of modern history”;*
- d. *“Horrendous crimes committed against Israeli people and against humanity”;*
- e. *“There are people that are going to feel deeply about what has occurred in the Middle East and what will occur in the Middle East ... I’ve spoken about Jewish Australians but let me address some comments for Muslim Australians and for people of Middle Eastern heritage for whom deaths in Gaza are going to be felt just as personally, just as deeply and with just as much grief as Israelis feel about the deaths of people in their country”;*
- f. *“The Australian government stands with communities when they are grieving the innocent loss of life”.* ([link](#)). The same except was shared to Instagram ([link](#)) The full speech was posted on Facebook ([link](#)) with the caption *“Israeli and Palestinian families are paying a terrible price for the horrific terrorist attacks by Hamas on Israel. Here's my full contribution in parliament on the Hamas attacks.”*

### **19<sup>th</sup> OCTOBER 2023**

#### *New evidence of international crimes by Israel*

55. Israeli forces operating a U.S.-sourced Apache attack helicopter fired a missile toward a group of Palestinian civilians, mostly children, around 1:30 p.m. on October 19 in Nour Shams refugee camp, near Tulkarem in the northern occupied West Bank, killing ten Palestinians, including four children, according to documentation collected by Defense for Children International - Palestine. A fifth child, 14-year-old Ali Abdullah Mohammad Said Khazna, was shot and killed by Israeli forces in the Thenaba neighborhood of Tulkarem around 5 p.m. During the same Israeli military incursion into Nour Shams refugee camp, Israeli forces shot and killed 15-year-old Taha Ibrahim Mohammad Mahmeed around 3:40 a.m. on October 19, according to documentation collected by DCIP.<sup>76</sup>

#### *Evidence of Australian Government Minister complicity*

56. Minister for Government Services, Bill Shorten has made the following statements:
- a. [When asked: two Teals joined forces with the Greens to oppose a parliament motion supporting Israel. Wow. ...How does all that sit with you?] *“I think that some in the Greens political party are out of step with the Australian people, or at least the mainstream. Israel does have a right to defend itself. Remember what's triggered this latest incredible round of instability and violence, it was thousands of Hamas terrorists crossing the border, kidnapping, murdering, killing. And I don't understand why some people seem to always struggle with the idea that Israel has a right to exist behind safe borders.”*<sup>77</sup>

### **20<sup>th</sup> OCTOBER 2023**

#### *Evidence of Australian Government Minister complicity*

<sup>76</sup> [Grave violations against Palestinian children | Defense for Children Palestine \(dci-palestine.org\)](#)

<sup>77</sup> [20231019 Minister Shorten interview on the Today Show with Karl Stefanovic - Department of Social Services Ministers](#)



57. The Prime Minister stated, “The responsibility for what is happening now rests firmly with Hamas and the actions that they have taken.”<sup>78</sup>

**20<sup>th</sup> OCTOBER 2023**

Evidence of support or criticism of Israel and blame of Hamas for Gaza

1. The Prime Minister stated:

- a. [When asked: Do you agree with Ed Husic and Anne Aly, who’ve accused Israel of collectively punishing Palestinians? And if it’s not collective punishment, what is it?:] *“Ed Husic, Anne Aly and my entire team voted for a resolution in the Parliament and indeed Ed and Anne spoke about it. That resolution was really important, it unequivocally condemned Hamas for the atrocities that it committed as a terrorist organisation, with its invasion of Israel. And with the atrocities that were committed, including to young people who were attending a music festival, we had people kidnapped and taken from their families. Israel has a right to defend itself. We also acknowledged in that resolution, importantly, that the lives of innocent civilians needed to be protected. Every loss of an innocent life matters, whether they are Israeli or Palestinian. And I do note the comments of President Biden today. This is what President Biden has had to say, ‘The US remains committed to the Palestinian people’s right to dignity and self determination. We mourn every innocent life lost. We can’t ignore the humanity of innocent Palestinians, who only want to live in peace.’ And I applaud the efforts of President Biden, to work with nations in the region to make sure that Gaza will be able to have access to food, water and medicine. President Biden went on to say, ‘We cannot give up on peace and we cannot give up on a two state solution.’ And his comments are appropriate, I completely agree with them, and I stand by, as does every Member of the Labor Party, the resolution that was adopted overwhelmingly in the Parliament, in the House of Representatives and the same resolution in the Senate just this week.”*<sup>79</sup>
- b. [When asked: What do you make of the Opposition Leader’s claims yesterday, urging you to fly to Washington via Tel Aviv, in the final moments of Parliament?:] *“Well, I think that quite clearly, the conflict in the Middle East is a complex one. It’s one that has gone on for a considerable period of time. The responsibility for what is happening now rests firmly with Hamas and the actions that they have taken. But there are, of course, longer term issues which President Biden has indicated this morning again, has given people a reminder, that they are issues that need to be addressed. And I acknowledge the suffering of Israeli, as well as Palestinian citizens, who are innocent, who just want to live a life in security and with justice, as the resolution carried by the Parliament said, going forward. I also acknowledge that leaders have a responsibility at this time to make sure that there is, whilst there is some concern in the community and hurt being felt for people who have relatives and friends in the Middle East, whether they be Israeli or Palestinian, this is a very difficult time for the community. So, individuals and particularly people, I draw your attention to the comments of the Director General of ASIO, Mike Burgess, who’s spoken about the need to be responsible in comments and to be careful about language which is used at this time. We have a harmonious community here in Australia, I want to see that continue. There’s no place here in Australia for anti-Semitism. There is also no place here in Australia for Islamophobia. The Leader of the Opposition chose to do that, that’s a matter for him. I have scheduled a visit, that has been longstanding with President Biden, where the logistics of organising that for Sunday, is when we will depart from Canberra. The leaders who have visited, and I note this, the leaders who have visited are members of the P5, the Permanent Members of the Security Council. The United States has a particular role in that, as does the United Kingdom, as does the other*

<sup>78</sup> PM Doorstop in Perth, 20 October 2023.

<sup>79</sup> <https://www.pm.gov.au/media/doorstop-perth-0>

people who have visited there. And President Biden's visit produced outcomes of negotiating through with different states, but also was accompanied by a considerable security effort for President Biden. This is not a secure area. Our priority has been to engage and I've engaged, I've met personally with the Israeli Ambassador. I had him to my residence and had a discussion. I've had discussions with leaders of the Palestinian community, leaders of the Jewish community here in Australia, as well. The decision of the Leader of the Opposition to raise such an issue publicly, that's a matter for him. But at this point in time, I have no plans to visit the Middle East, and in terms of the security agencies as well, there's no disagreement from the position that I've taken."<sup>80</sup>

2. The Minister for Defence Personnel and Minister for Veterans' Affairs, Matt Keogh stated:

a. [When asked: Okay, first up, just your reaction, both of you, to the Greens not wanting to be a part of the original motion and wanting to break away from the motion in relation to Israel, to condemn Israel. What do you make of that?:] *"Oh, look, what do I make of it? I think it's really disappointing. They tried to move an amendment to the resolution and obviously that's their right to do that, but, I think, most disappointingly was that after the vast majority of the Parliament and House of Reps came together to oppose that amendment, they then didn't join with everybody else in supporting the actual resolution, the motion itself, which, you know, of course, the Government, the Opposition, many of the crossbench, all supported and I think Australians will be very disappointed with the position taken by the Greens there. I think the motion was obviously very supportive of the people of Israel that have come under attack and respecting their right to respond to that, but also acknowledging the importance of the maintenance of international law and protecting civilians, and so the motion was a very clear motion of support and really fundamentally looking for peaceful solutions ultimately in the Middle East and I think it's very disappointing that the Greens political party did not support that position that was supported by the Government, both Opposition parties, and cross-bench across the board."*<sup>81</sup>

b. [When asked: Matt, just wearing your sort of portfolio, I mean, what sort of situation is the Australian military in at the moment? I mean, is there any concerns that at any point, that our military could become involved in this in any way? I know that we've had repatriation flights, so we've had Air Force planes in the area. Anything more that we may have to get involved in, do you think?:] *"Well, it's certainly not a conflict that we are expecting to be engaged in militarily. Having said that, we do have Australian Defence Force personnel on the ground in Israel, in Palestine occupied areas, in Sinai, doing work through and with the United Nations and other peacekeeping work. All of those personnel are accounted for and safe and that is important, and their families have been engaged with and, of course, we are doing the repatriation flights to assist people to get out of Israel and Gaza and we're working with authorities, including the US and Egypt, around how we can assist Australians that are caught in Gaza as well. But there is no expectation in terms of military - Australian military - involvement in the actions that are happening in the Middle East, but Andrew's point is absolutely right. People can sort of tread over different elements of history, but at the end of the day, a terrorist attack is a terrorist attack and when - when an organisation, not a country, comes in and attacks innocent civilians, adults and children, in the institutions that they rely upon, in schools and others, you know, that is not an acceptable way of behaviour and we've never accepted that in any country, in any area where of the world. We've always condemn that activity and that's exactly what the Parliament and the Government and the Opposition and others did this week."*<sup>82</sup>

c. [When responding to: Gary, I should add as well, the Hamas charter includes the obliteration of the Jewish people. So they are committed to extinguishing from this earth the Jewish people. And we've got to be clear about that as well. And so when we talk about the Middle East and the Palestinian people and the Jewish people, there are a

<sup>80</sup> <https://www.pm.gov.au/media/doorstop-perth-0>

<sup>81</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-20/6pr-perth-radio-mornings-gary-adshead>

<sup>82</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-20/6pr-perth-radio-mornings-gary-adshead>

lot of innocent people caught up in this, all the blood that has been shed and will be shed because, unfortunately, this is a long way from resolving itself. The blood that will be shed is on Hamas and I think that's really got to be made clear again.:] *“And I think that's on both sides. Hamas is not ultimately the friend of Palestinians either. There are Palestinian civilians that are suffering because of the actions being taken by Hamas, both in the initial attack and subsequently, and that is a, I think, a distressing situation. Australians are seeing this play out on the news, there are Israeli, Jewish, Palestinian victims to all of this, and we do want to see it come to a peaceful resolution as quickly as possible, international law maintained, civilians being protected no matter who those people are. It's not about their religion or their background or where they live we want to see civilians protected.”*<sup>83</sup>

3. The Minister for the National Disability Insurance Scheme and Minister for Government Services, Bill Shorten stated:

- a. [When asked: It's certainly been a big week in politics. The failed Voice referendum, the war in Israel and Gaza, and as always, I'm joined by the Minister for the NDIS, Bill Shorten and the Shadow Treasurer, Angus Taylor. Fellas, thanks for joining us. I want to start with the Middle East. Now, the Prime Minister is heading to the US on Monday, and he's ruled out visiting Tel Aviv on the way. We've had the leaders of the US and Britain visit. We've had the French leader also set to visit Israel. It's a strong show of solidarity, Bill, should our Prime Minister visit as well?:] *“Oh no, I don't believe he has to visit. I think we're demonstrating our solidarity with Israel.”* [So, you don't believe that after the US, the UK and the French leader visiting, the fact that we have been questioned by the opposition and by others about our commitment, that a visit wouldn't be the strongest sign that you could give of our solidarity with Israel?:] *“Oh, there's many ways we can show solidarity, and I think you've gone to the heart of it. The opposition's questioning it. You know, maybe the opposition need to step up a bit and stop trying to look at every issue through the lens of pinging Anthony Albanese. Labor has expressed their solidarity with Israel. I've done it personally many times, absolutely. So, I think it's a bit of a red herring debate what the opposition just tried to fling it at the end of Question Time tomorrow – yesterday, sorry.”* [Angus, is it a red herring?:] [No. Absolutely not. Look, Bill, Bill may have stood with Israel, but we've had several –:] *“I have.”* [Hang on, hang on. Hear me out.] *“Angus, no, no, no, don't mischaracterize my position. Because when we talk about foreign affairs and matters so important, don't say I may have...”* [Well, you have.:] *“So just so there's no debate. Thank you.”*<sup>84</sup>
- b. [When asked: Do you accept that language of collective punishment being handed out to the Palestinian people. Do you really accept that language?:] *“I don't use that language because I think Israel has a right to defend itself.”* [That's the language that Ed Husic has used and backed up by Anne Aly.:] [Oh, so you condemn that language?:] *“You know what, Angus? This nation needs a little better than the semantics. You know, you must condemn Ed Husic... Is that the best you've got on this debate?”* [That's not -] *“You know, I think the Liberals – no, let me go now. I think the Liberal Party needs to grow up here. You know that the government is supporting Israel. You know it. You know it. You also know that ordinary Palestinians –”* [But the Prime Minister won't go to Israel.] *“- and when you've finished interrupting, why don't you let me get my point out?”* [You all make your point, Bill. An then, Angus, you can have your say.:] *“I think the opposition is actually letting the country down here at the moment. The real issue here is that Israel was the victim of a shocking atrocity, and no previous complaints about the failures of Palestinian-Israeli relations justifies what Hamas did. These people are evil and psychotic, and they want to - they don't care how many ordinary Palestinians they martyr. But it is okay for members of Parliament to say, as people in the community say, that we want to see international laws observed. Democracies have to - we don't, I mean, I'm so fortunate. We are so fortunate that we don't have some of*

<sup>83</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-20/6pr-perth-radio-mornings-gary-adshead>

<sup>84</sup> <https://ministers.dss.gov.au/transcripts/12851>

*the neighbours that Israel has. But, you know, I think the opposition need to recognize what do we agree on here? We agree that Israel has a right to defend itself. We agree that a lot of the anti-Israel case is fuelled by that deep, you know, evil of anti-Semitism. But there's ordinary Palestinians who are affectively human shields for Hamas, and we all want to make sure that they can be as safe as they can.” [And Angus, your response?:] [That's not the point. If I may respond, Deb, that is not the point, Bill. The point is, you've had two ministers in the government talk about Israel handing out collective punishment to the Palestinian people. There is no evidence that they've done that. None whatsoever. If the government has evidence of that, they should bring it forward and those comments should be condemned. And frankly, the Prime Minister should go to Israel and give his unequivocal support for them to defend themselves against this absolutely disgraceful, as you rightly say, this absolutely disgraceful terrorist attack.:] [And, Bill, do you support Ed Husic's call to light up the monuments in Sydney, like the Opera House in the colours of the Palestinian flag, because of the number of innocent Palestinian civilians who have been killed in Gaza.:] “I haven't thought about that issue.” [Well, I'm asking you to think about it. What do you think?:] “Okay, I will. I'll get back to you. I'm not going to – see, what we're getting here is a debate, which I think is, you know, who's going to be the strongest virtue signaller to particular groups. I'm not interested in that. I am genuinely interested in making sure that this shocking catastrophe, this act of evil on October the 7th, is resolved as quickly as it can with the least possible harm to anyone. But Hamas took that, you know, Hamas took a whole lot of sensible, just took common sense out the window by their bizarre act of butchery. But I think it's important that in the Australian political scene, we're trying to encourage the social cohesion here. And it comes on the main parties. I don't expect the Greens to do it. They're just they just consign themselves to just being, you know, sort of cheerleaders for stupid resolutions. But the opposition and the government need to just stop trying to pin each other down on who said what, when and condemn this and condemn that. Look, it's more important than this, Angus.”<sup>85</sup>*

## **21<sup>st</sup> OCTOBER 2023**

### *Further evidence of international crimes by Israel*

58. Prime Minister Benjamin Netanyahu stated on 21 October 2023: “Two of our kidnapped are home. We will not relent in our effort to return all of the kidnapped and the missing. “At the same time we continue to fight till victory.”<sup>86</sup>
59. At least 1,756 Palestinian children in Gaza have been killed in Israeli attacks since October 7, according to the Palestinian Ministry of Health, with more than 4,000 injured.<sup>87</sup>
60. The World Health Organization (WHO) has documented 62 attacks on health care affecting 29 health care facilities (including 19 hospitals damaged) and 23 ambulances. Seven hospitals are no longer operational due to damage or evacuation order.<sup>88</sup>
61. At least 193 educational facilities have been damaged, including at least 29 UNRWA schools, according to UN OCHA. Eight schools were used as emergency shelters for IDPs, and the Israeli airstrike on Al-Maghazi UNRWA school on October 17 killed eight Palestinians and injured 40 others.<sup>89</sup>

## **22<sup>nd</sup> OCTOBER 2023**

<sup>85</sup> <https://ministers.dss.gov.au/transcripts/12851>

<sup>86</sup> Prime Minister of Israel Press Release, 21 October 2023, <https://www.gov.il/en/departments/news/spoke-announcement211023>

<sup>87</sup> [Grave violations against Palestinian children | Defense for Children Palestine \(dci-palestine.org\)](https://www.dci-palestine.org/grave-violations-against-palestinian-children)

<sup>88</sup> Ibid

<sup>89</sup> Ibid

### Evidence of Australian Government Minister complicity

1. Minister for Foreign Affairs, Penny Wong stated:
  - a. "... What we saw two weeks ago was an assault on Israel, and on the Jewish people. It was also an attack on our collective humanity. It was an act of evil perpetrated by a terrorist group, a hateful group, bent on the destruction of the State of Israel and the erasure of Jews. And this is why it must be condemned. ..." <sup>90</sup>
  - b. "Because it matters, our collective statement of solidarity - so important in these times. Our country Australia stands with Israel now and always will." <sup>91</sup>
  - c. "I express my deepest sympathies to you all and to all those impacted by these heinous acts. We are shocked and we are horrified. And we grieve with you. We remain as steadfast and unwavering as ever in our support for Israel. We believe that the just and enduring peace Israelis deserve would only be enhanced by a negotiated two state solution, in which Israel and a future Palestinian state coexist, in peace and security, within internationally recognised borders. And one of the many tragic consequences of Hamas's abhorrent attack, and its hatred, is that that two-state solution is further out of reach. Just as we stand with Israel, we stand with you all in the Australian Jewish community." <sup>92</sup>

### **23<sup>rd</sup> OCTOBER 2023**

#### Further evidence of international crimes by Israel

62. It is reported in the media that life-saving humanitarian assistance continues to be denied by Israel:
  - a. A second trickle of aid was allowed into Gaza from Egypt on Sunday, but the head of the World Food Programme (WFP) warned that the humanitarian situation was now catastrophic for the 2.3 million people trapped inside the territory.
  - b. Speaking on ABC's This Week programme, the WFP chief, Cindy McCain, described the amount of aid delivered into Gaza so far as a "drop". "We need – we need secure and sustainable access in there ... This is a catastrophe happening and we just simply have to get these trucks in."
  - c. Up to 19 aid trucks crossed into Gaza on Sunday but there was a brief panic at the crossing when witnesses said a blast was heard and that ambulances could be heard deploying from the Egyptian side. <sup>93</sup>

This is ongoing evidence of a Genocide and a Crime against Humanity by Israel.

### **23<sup>rd</sup> OCTOBER 2023**

#### Evidence of support or criticism of Israel and blame of Hamas for Gaza

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<sup>90</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/remarks-jewish-community-council-south-australia-vigil>

<sup>91</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/remarks-jewish-community-council-south-australia-vigil>

<sup>92</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/remarks-jewish-community-council-south-australia-vigil>

<sup>93</sup> [Israel intensifies attacks on north Gaza as WFP says more aid urgently needed | Israel-Hamas war | The Guardian](#)

63. The Prime Minister stated:

- a. [When asked: How important will Gaza be as a topic, Prime Minister?:] *“There is no doubt that the focus of the world is on the unrest in the Middle East following Hamas' invasion, and atrocities that were committed in Israel. And we will no doubt be talking about those issues. Australia and the United States are important partners. We will be having discussions. This is now our ninth meeting, and will be our fifth bilateral meeting between Australia and the United States. It will be a very important visit that comes at a turbulent time for the world. But the good thing about Australia and the United States is that the strength of the relationship means it provides that stability, that security and that comfort with each other that comes from our common values. Thanks very much.”*<sup>94</sup>
- b. [When asked: Prime Minister, you'll no doubt be talking to President Biden about what's happening in Israel and Gaza. The day after the Hamas attacks, he said that he put a call into President Netanyahu. Just wondering, have you spoken to him yet? And what message did you give him on behalf of Australia?:] *“No, I have spoken to the Israeli Ambassador to Australia on a couple of occasions. And the views that I've put are consistent with the resolution that was carried by the Parliament. We remain absolutely horrified by the Hamas attacks on Israel. These are abhorrent acts of terror against innocent civilians. The Australian Parliament overwhelmingly adopted that position and was recorded by all the people from the major parties. And we recognised as well, in that resolution, the importance of the protection of civilian lives. The situation is challenging and rapidly changing. And there is a terrible loss of life, including innocent life of both Israelis and Palestinians. And I think that every innocent life matters, whether it is Israeli or Palestinian. As hostilities continue, it's vitally important that international humanitarian law is upheld for the protection of civilians wherever they live. We are playing our part in providing humanitarian relief. We think that is very important. And I know that President Biden has been working strongly on that.”*<sup>95</sup>
- c. [When asked: Prime Minister, while negotiating humanitarian relief for Gaza, President Biden's visit to Tel Aviv is also widely interpreted as having given the green light to Israel's planned ground invasion. As you will share a stage with the President later this week, what assurance or reassurance do you offer to pro-Palestinian communities in Australia, that you are not, in effect, picking sides?:] *“We pick a side against Hamas. And we did that very clearly and unequivocally. Because the actions of Hamas are against the interests of both the Israeli population, clearly, but also against the interest of Palestinians. We support, as President Biden reaffirmed the United States, a support for a two state solution. It is very hard to see how Hamas could negotiate through to what would be a two state solution in the Middle East. So, I think that President Biden has played a very constructive role. Of course, the United States has a special responsibility as a member of the P5. And I think that, as you look at the emphasis of President Biden has made clearly calling out Hamas, clearly, as well, calling for humanitarian aid to be allowed to Gaza and talking about international humanitarian law and the international law when it comes to war being implemented, they are all appropriate.”*<sup>96</sup>
- d. *c Obviously, in doing that, we have joined the international call that the rules of war be adhered to. Now, we have been very clear about all of that from the get go. And it seems to me that actually, when you strip it away, is the position of all the major parties in Australia. We should just take that and be doing everything we can to supporting Israel in this situation, but also in speaking up on behalf of innocent civilians, be they Israelis or Palestinians.”*<sup>97</sup>

<sup>94</sup> <https://www.pm.gov.au/media/doorstop-interview-washington-dc>

<sup>95</sup> <https://www.pm.gov.au/media/press-conference-embassy-australia-washington-dc>

<sup>96</sup> <https://www.pm.gov.au/media/press-conference-embassy-australia-washington-dc>

<sup>97</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-23/television-interview-sky-news-afternoon-agenda>

## 24<sup>th</sup> OCTOBER 2023

### Evidence of Australian Government Complicity

64. The Minister for the National Disability Insurance Scheme and Minister for Government Services, Bill Shorten stated:

- a. [When asked: And just to final one I want to ask on Israel, Bill. The Prime Minister, he was again asked about this this morning, and he was strong in his support of Israel. But do you think he should be in Israel on this current trip to actually show solidarity with the Jewish people?:] *“I know he has solidarity with the Jewish people and with Australians of Jewish heritage, just as I know he feels keenly for Australians of Palestinian heritage. The Prime Minister has been very clear about his repugnance at the shocking atrocities of the psychotic Hamas attacks. France and England and the USA, they're permanent members of the UN Security Council. You know, I love Australian foreign policy, it's important. But I honestly don't know if it is necessary for him to be in Tel Aviv right now. I just I know the outrage, the Liberal outrage machine, is saying he must be there, but I genuinely not sure what it would add for an Australian Prime Minister to be in Israel right now. I mean, what is he going to say there that he can't say here? And again, we're not permanent members of the UN Security Council like those other countries.”*<sup>98</sup>
- b. [Is it because though, I mean, some have suggested that not everyone in the Labor Party is singing from the same song sheet, with some senior members essentially accusing Israel of war crimes last week.:] *“No, that's not why he's not there. And I don't think that is what senior Labor Party people have been saying. I think they've been expressing their support for all of the victims caught up in this dreadful conflict. But Labor and the Prime Minister and myself included, have been very clear that whatever the plight of the two state negotiations in the Middle East between Palestine and Israel have been up to now, nothing legitimizes the atrocities that Hamas did. You know, I completely repudiate the view that somehow Israel deserved what happened to it. It didn't. Those people didn't deserve that. I also know that we want to make sure that, however Israel deals with Hamas and its right to defend itself, that we want to see international laws be observed as much as they can. And that's important for innocent Palestinians caught up in this situation beyond their control.”*<sup>99</sup>

## 25<sup>th</sup> OCTOBER 2023

### Further Evidence of Israeli international crimes

65. On 25 October 2023, the Prime Minister of Israel, Benjamin Netanyahu released a press statement that includes:

- a. “...we are working around the clock to realize the goals of the war until victory. We are doing so without political considerations. We are concerned by one thing – saving the country, achieving victory.”
- b. “We are raining down hellfire on Hamas. We have already eliminated thousands of terrorists – and this is only the beginning.”<sup>100</sup>
- c. The Prime Minister continues: “When we go into Gaza, in the continuation of the fighting, we will exact the full price from the murderers, those who perpetrated

<sup>98</sup> <https://ministers.dss.gov.au/transcripts/12876>

<sup>99</sup> <https://ministers.dss.gov.au/transcripts/12876>

<sup>100</sup> Prime Minister of Israel Press Release, 25 October 2023, <https://www.gov.il/en/departments/news/spoke-statement251023>

Hamas-ISIS's horrors. I again call on the non-combatant population in Gaza – evacuate to the southern Gaza Strip.”

66. On October 25th, Sderot Mayor, former MK (No. 3 in Naftali Bennett’s party) Alon Davidi said: “Every inhabitant of Gaza is ISIS. They must all be hit. ... I have no pity for them. Those who live there, two million people, are Nazis. It’s an area of Nazis and ISIS that gives total support to Hamas and Jihad and, as far as I’m concerned, every resident of Gaza is Hamas and ISIS and we need to hold them accountable.” Davidi points out that this is the feeling shared by all residents of the South with whom he talks: “People want and say clearly: it’s either us – or them.”<sup>101</sup>
67. This is an acknowledgement by Israel that it is aware of the “thousands” of deaths” it has caused by way of airstrikes since 7 October. It also evidences the intention to continue mass destruction of Gaza at all costs and without regard to civilian lives, in light of the clear fact that:
- a. the unarmed ordinary Gaza civilians are either trapped in parts of Gaza,
  - b. are in a vulnerable physical condition, and/or
  - c. are unable to travel or have any means to leave Gaza to a safe haven
  - d. due to the siege and the failure of Israel to provide a real safe haven for the innocent civilians.

### 25<sup>th</sup> OCTOBER 2023

#### Evidence of support or criticism of Israel and blame of Hamas for Gaza

68. The Prime Minister stated:

- a. *“Steadfast in these values, we condemn in the strongest possible terms Hamas’ heinous terrorist attack on Israel. The terrorist actions of Hamas can have no justification, no legitimacy, and must be universally condemned. We call for the immediate and unconditional release of all hostages. Hamas offers nothing but terror and bloodshed. It does not represent the Palestinian people, nor their legitimate needs and aspirations. Our countries will support Israel as it defends itself and its people against such atrocities. We affirm Israel’s inherent right to defend itself. In doing so, in line with the values we share as democracies, we call on all parties to act consistent with the principles of international law and to protect civilians as an utmost priority. We are concerned at the humanitarian situation in Gaza and call on all actors to ensure the provision of humanitarian supplies to populations in need. Our two countries support equal measures of dignity, freedom, and self-determination for Israelis and Palestinians alike and we mourn every civilian life lost in this conflict. We continue to support Palestinian aspirations for a state of their own and consider a two-state solution as the best avenue towards a lasting peace.”<sup>102</sup>*
- b. [When asked: Have you had a chance to speak to Benjamin Netanyahu? I know there’s been efforts made, obviously. The President was there in Israel last week. Are you still endeavouring to speak to the Israeli Prime Minister?:] *“I am. I have spoken with the Israeli Ambassador on a number of occasions. We continue to, though we understand that, obviously, Mr Netanyahu has pressures on which at the top of the list is not the discussion with the Australian Prime Minister. We understand the pressures which are there. But we have a request for a calling. Thank you.”<sup>103</sup>*

69. Deputy Prime Minister and Minister for Defence Richard Marles as acting Prime Minister stated:

- a. [When asked: Richard, you talk about the volatility of the situation on the ground there. We’ve heard the French President calling for an international coalition to take down Hamas, much like there was with ISIS. And then you’ve got to balance that too, with the many people who sympathise with the Palestinian cause here in

<sup>101</sup> <https://www.inn.co.il/news/617925>

<sup>102</sup> <https://www.pm.gov.au/media/united-states-australia-joint-leaders-statement-building-innovation-alliance>

<sup>103</sup> <https://www.pm.gov.au/media/press-conference-white-house>



Australia, we've seen the Canterbury-Bankstown Council vote to fly the Palestinian flag. Where does your government sit on what that council is doing and how you balance that with the international obligations?:] *“Yeah, look, it's a really good question, Jane. I think there are a few things to say in all of that. Firstly, if we just focus on the international side. I mean, we do respect and acknowledge that Israel has a right to defend itself and to move against Hamas. We've been making that clear from the very beginning. Obviously, in doing that, we urge Israel to adhere to the rules of war, to make the protection of civilian life front and centre in all that they do. I think coming back home, we really need to be looking after each other in this moment. We get that there are people on both sides who have very strong views about what's happening in the Middle East and that's completely understandable. But at the end of the day, we really need to respect each other as Australians. And it's really important that as we move forward, people have a right to express their view. But it is so important that we are respecting each other as Australians and that we're focusing on, in a sense, the peaceful society that we have in this country and that is based on a mutual respect that we have for each other. So, councils are going to make their decisions. That's ultimately a matter for councils. But we really do need to be, at this moment, taking special regard in terms of the way in which we're treating each other.”*<sup>104</sup>

- b. [When asked: Richard, if military assets and personnel are being sent to the region, or more assets and personnel, presumably a high ranking member of government would go to Israel, be it the Prime Minister, the Foreign Minister, or yourself?:] *“I mean, we've been making our position very clear, and we've been talking with Israel around this as well. The attacks that were made a few weeks ago by Hamas were acts of terrorism, and they were acts that were committed on not combatants, but innocent Israelis. And we have been making our position absolutely clear. Israel know that. And we've absolutely supported Israel's right to defend itself and to move against Hamas, obviously, in doing so, we've joined our voice to that of the international community around seeing the rules of war be respected. And we've been really clear with Israel in relation to all of that. I mean, at this moment, Israel's pretty busy with dealing with all that it needs to deal with, and that's their focus.”*<sup>105</sup>
- c. [When asked: What's going on on the ground there in the Middle East? Lots happening overnight in the UN as well. The UN Secretary General, Antonio Guterres, Richard Marles, said that the terror attacks by Hamas did not happen, in his words, in a vacuum. Talking about Israel's approach to Gaza over many years that has prompted Israel's ambassador to call on Mr Guterres to resign. What do you make of those comments?:] *“Well, I think we've got to have real clarity in this moment. The attacks that occurred a few weeks ago were terrorist attacks by Hamas. They were not attacks that were made on combatants, they were attacks that were made on innocent people. And in that sense, they are murder. And Israel does have a right to defend itself. We've made that very clear in terms of being a view of the Australian government, and that means they have a right to move against Hamas. Now, in saying all of that, obviously the rules of war need to be respected and there has to be a focus on the protection of civilian life. And we understand the Middle East has a long and complex history and there are very strong opinions that people have about the Middle East on both sides, opinions that people will have in this country as well. But nothing, nothing justifies the attacks that Hamas made a few weeks ago on those innocent Israelis.”*<sup>106</sup>
- d. [When asked: And Minister, have we received any requests from Israel for assistance?:] *“No. I mean, we've obviously made our position very clear in relation to Israel, that we support Israel's right to defend itself. The attacks that we saw from*

<sup>104</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/television-interview-today-show>

<sup>105</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/television-interview-sky-news-first-edition>

<sup>106</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/television-interview-abc-news-breakfast>

*Hamas a few weeks ago were terrorist attacks. They were not made against combatants, they were made against innocent people, that's murder. And Israel does have a right to defend itself and to move against Hamas. Obviously, we expect Israel to follow the rules of war and to make the protection of civilian life front and centre in the way in which they go about their actions. But Israel does have a right to defend itself. It's not sought any assistance from us in doing that.*"<sup>107</sup>

- e. [When asked: Given you haven't been able to evacuate our own citizens, how can you support a ground invasion which will put them at risk?:] *"Well, they are separate questions. We are very much focused on doing everything we can to support Australians who are in a dangerous environment. The attack by Hamas a few weeks ago now was a terrorist attack- nothing justifies it was not in relation to combatants, it was on innocent people. And Israel does have a right to defend itself and to move against Hamas. Obviously, we have, in saying that been very clear, that the rules of war need to be adhered to and the protection of civilian life needs to be front and centre in terms of all the steps that are taken by Israel. And again, we've been making that point very clear, as well –"*<sup>108</sup>
- f. [When asked: So just be clear with me. Is this collective punishment?:] *"Well, Israel has a right to defend itself and to move against Hamas. What is absolutely essential in doing that is that the protection front and centre in all the steps that Israel takes and that the rules of war are adhered to, and we've been making that very clear as well."*<sup>109</sup>
- g. [When asked: Would you like then- I know that is the government's position, but do you think fuel should go in to, for instance, allow those hospitals to run?:] *"Well, again, these are judgments that are being made in the circumstances where Israel has the information in front of it and we don't. And so I'm not going to walk down the path of making judgments that would be made by those who are prosecuting a war when they have a series of information that I obviously don't have at hand now. The only point that we can make is the points that we have made, and that is that in making those judgments, given all the information that is at their fingertips, the protection of civilian life has to be front and centre."*<sup>110</sup>

## **26<sup>th</sup> OCTOBER 2023**

### Evidence of Israel's international crimes

- 70. On 26 October 2023, Former Israeli UN ambassador Dan Gillerman called Palestinians "horrible, inhuman animals".<sup>111</sup>
- 71. On 26 October, the Ministry of Health in Gaza published a list of names of 6,747 victims killed by Israeli airstrikes, including 2,913 children. It was reported that so many Gazan civilians were killed by the airstrikes that they were buried in mass graves.<sup>112</sup>
- 72. According to the Human Rights Office for the Coordination of Humanitarian Affairs, "[e]ntire neighbourhoods have been destroyed"<sup>113</sup>.

### Evidence of Australian Government Minister complicity

<sup>107</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/radio-interview-2gb-breakfast>

<sup>108</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/radio-interview-abc-rn-breakfast>

<sup>109</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/radio-interview-abc-rn-breakfast>

<sup>110</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-25/radio-interview-abc-rn-breakfast>

<sup>111</sup> <https://www.instagram.com/reel/Cy2l4bJKILG/?igshid=MzRIODBiNWFIZA==>

<sup>112</sup> NYT, 26 October 2023, <https://www.nytimes.com/2023/10/26/world/middleeast/gaza-death-toll-israel.html>

<sup>113</sup> OCHAOPT, 26 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-20>

73. Minister for Foreign Affairs, Penny Wong:  
a. “The way Israel exercises its right to defend itself matters. It matters to civilians throughout the region, and it matters to Israel’s ongoing security.”<sup>114</sup>

## 27<sup>th</sup> OCTOBER 2023

### Evidence of Further International Crimes

74. On 27 October, in a video shared widely online Former MK Moshe Feiglin called for the complete destruction of Gaza, like Hiroshima (without nukes).<sup>115</sup>
75. On 27 October, the United Nations Office for the Coordination of Humanitarian Affairs reported that “landlines, cellular and internet services” are cut off across the Gaza Strip following intense Israeli airstrikes, with the main telecommunications tower reportedly being hit. The UNOCHA reported “that hospitals and humanitarian operations ‘can’t continue without communications’”.<sup>116</sup>
76. The Committee to Protect Journalists (CPJ) reported on 27 October 2023 that the weeks of 7 to 27 October were “the deadliest period for journalists covering conflict since CPJ began tracking in 1992”, with at least 29 journalists killed.<sup>117</sup>
77. On 27 October 2023, Medecins Sans Frontieres highlighted the impact of Israel’s attack on Gaza’s health facilities calling it a “a growing human catastrophe”. MSF labeled Israel’s actions against Gaza as “unconscionable and amounts to the collective punishment of 2.2 million Palestinians living in Gaza – nearly half of whom are children.” It confirmed “at least 72 attacks on healthcare in Gaza, including facilities, ambulances, and medical staff.” MSF detailed five ways the war is putting Palestinian people’s lives and health at risk:
78. Evacuation orders threaten the lives of the most vulnerable. “There is simply no way to safely evacuate patients from a hospital. Bed capacity in southern Gaza has only one-third the bed capacity of the hospitals in the north. There are not enough ambulances and roads are badly damaged.”
79. Hospitals cannot run without fuel and electricity. “When backup generators shut down for lack of fuel, it will be a death sentence thousands of patients whose survival depends on electricity. This includes 130 premature babies who are dependent on incubators and those on life support or those receiving treatment for dialysis. At Al-Shifa hospital, one of the main hospitals in Gaza City, fuel reserves are on the point of running out.”
80. People are suffering from lack of access to essential medicines. “At MSF-supported Al Shifa Hospital, Gaza’s main surgical facility, colleagues have reported a shortage of painkillers. Surgeons are operating on patients without sufficient anaesthesia. Pharmacies are running out of medicines. People with chronic illnesses could soon face life-threatening complications as a result of the shortage of medical supplies.”
81. Hospitals and medical staff are overwhelmed and barely functioning. “Medical care in Gaza is at breaking point. Medical staff are exhausted, terrified, and feeling powerless, as there is little they can do for patients, especially with the lack of medicines....The hospitals that are running are completely overwhelmed. Al-Shifa hospital, Gaza’s main surgical hospital, where some of our Palestinian colleagues continue to work, has run out of space. The hospital has a capacity to treat 700 patients and is currently treating some 5,000. Surgeons have been forced to amputate limbs as patients lie on the floor.”

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<sup>114</sup> <https://www.foreignminister.gov.au/minister/penny-wong/media-release/additional-assistance-urgent-humanitarian-needs-gaza>

<sup>115</sup> [Moshe Feiglin, Israeli politician and former Knesset member, said in an interview with Aljazeera that the only solution is the “complete... | Instagram](#)

<sup>116</sup> OCHAOPT, 27 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-21>

<sup>117</sup> CPJ, 27 October 2023, <https://cpj.org/2023/10/cpj-statement-on-news-blackout-in-gaza/>

82. Lack of clean water and overcrowded shelters increase the risk of disease.<sup>118</sup>

## 27<sup>th</sup> OCTOBER 2023

### Evidence of support or criticism of Israel and blame of Hamas for Gaza

83. The Prime Minister stated:

- a. *“... Australia unequivocally condemns the atrocities committed by Hamas and the destruction their acts of terror have inflicted on innocent lives in Israel and Gaza. And we stand with our international partners in calling for access to life-saving humanitarian assistance to civilians in Gaza. In my time here, I’ve had the opportunity to personally thank the President for the courage and leadership he has shown. As a true friend of Israel, not only did he stand by them in this terrible time. He offered wisdom as well as solace. Calling for all parties to allow safe, unimpeded and sustained humanitarian access and safe passage for civilians. And the President used the power of his office to assert an undeniable principle: every innocent life must be protected. Israeli and Palestinian. ...”*<sup>119</sup>

84. Deputy Prime Minister and Minister for Defence Richard Marles as acting Prime Minister stated:

- a. [When asked: Yeah, absolutely. And you both know all too well the heat that is involved in a conflict of this nature. I mean, Penny Wong has had a fiery clash with the Greens after one Senator called her out for refusing to condemn Israel's ‘siege on Gaza as a crime against humanity’, quote unquote. Richard, some massive statements from the Greens here. What's your response to that?:] *“Well, I think we need to have a real sense of clarity about what has happened here. The attacks that Hamas undertook a couple of weeks ago now were acts of terrorism. They were acts not against combatants, they were acts against innocent people. The significant loss of life associated with that was murder and it needs to be condemned in the strongest possible terms. And there is nothing which justifies what Hamas did, and the government's been really clear about that. But everybody needs to be very clear about that. And that is why we say that Israel has a right to defend itself. I mean, any government in its situation would be seeking to ensure that its population is safe and that this kind of attack won't happen again. Now, we've also made clear that whatever ensues here must be done in accordance with the rules of war. It's really important that the protection of civilian life is front and centre in everyone's minds. Innocent Israelis and innocent Palestinians have died here and that has to be our focus. But the Greens are obviously getting this very wrong. But it's really important that people get the clarity of what has happened here.”*<sup>120</sup>

85. The Minister for the National Disability Insurance Scheme and Minister for Government Services, Bill Shorten stated:

- a. [When asked: I want to ask you about Tony Burke's comments. He had some pretty strong support for a local council in his electorate that has been displaying the Palestinian flag to honour the civilian victims of what's happening in Gaza. He actually, he fully backs it and says, well, there should be more such displays if you consider the number of displays for Israel. Do you agree with those comments?:] *“Listen, I'm not going to start editorializing or commenting on - you know, you're a very good professional journalist, but you're telling me something that Tony has said. I'll read the comments for myself, because I think what's really important in this terrible situation happening in the Middle East is that Australia's political leaders build social cohesion. I'm very clear, and that the government's been very*

<sup>118</sup> MSF, 27 October 2023, <https://www.msf.org/five-ways-war-gaza-impacting-palestinians-health>

<sup>119</sup> <https://www.pm.gov.au/media/alliance-future>

<sup>120</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-27/television-interview-today-show>

*clear. Hamas' attack 20 days ago against Israel was atrocious. It was barbaric. It was unjustified in the extreme. ...*<sup>121</sup>

- b. [When asked: So, on that right to live safely, which the Australian government has backed Israel's right to self-defence. In other words, stop Hamas being able to carry out future attacks of this nature. If, as we've seen in the past, Hamas, make sure there are civilians near targets, near military targets, and Israel carries out those attacks, is that not Israel's fault? Because otherwise they could never actually carry out attacks because there's civilians there?:] *"I'm not going to start trying to draw the zig zag of international law. Hamas is using ordinary Palestinian people as human shields. Hamas is wicked. Let's be very clear about that. If we want peace in the Middle East, their tactics are going exactly in the opposite way. In Australia, when we talk about 20km distance, we're just talking between suburbs, between one Westfield shopping centre and another. But in Israel, that's the border with a regime who are dedicated to killing the civilians of Israel. This is shocking. But I also really understand the natural, instinctive concern for Palestinian civilians who are caught up in this war zone. It's a wicked situation. One thing I do know is that me making generalizations from the safety of a Sky News interview, it's about how we keep social cohesion here, it's about how we express our support for the right to Israel defend itself. But it's also about Palestinian people, and it's making sure that they're not further victims to what Hamas clearly doesn't care what happens to them."*<sup>122</sup>

## **28 OCTOBER 2023**

### Further evidence of Israel international crimes

86. On 28 November 2023, United Nations Human Rights New York Office Director Craig Mokhiber, sent a letter to the High Commissioner in light of the escalation of violence by Israel against Gaza. Mr Mokhiber called the attacks on Gaza "a text-book case of genocide."<sup>123</sup> Mr Mokhiber continues in his letter: "Not only are these governments refusing to meet their treaty obligations "to ensure respect" for the Geneva Conventions, but they are in fact actively arming the assault, providing economic and intelligence support, and giving political and diplomatic cover for Israel's atrocities. "We must recognize that the US and other western powers are in fact not credible mediators, but rather actual parties to the conflict who are complicit with Israel in the violation of Palestinian rights, and we must engage them as such".
87. Bombardment and ground raids by the Israeli military into Gaza intensify with chief of staff Herzl Halevi reportedly declaring on 28 October that "the objectives of the war require a ground operation"<sup>124</sup>.
88. On the same day, Israeli Prime Minister Netanyahu gives a public address confirming "the widening of the ground invasion" as part of a new phase in the hostilities, which he referred to as Israel's "second war of independence"<sup>125</sup>. Netanyahu also proclaims: "You must remember what

<sup>121</sup> <https://ministers.dss.gov.au/transcripts/12911>

<sup>122</sup> <https://ministers.dss.gov.au/transcripts/12911>

<sup>123</sup> The full letter is currently only accessible on X, <https://twitter.com/Raminho/status/1719385390086271164>, some details of the letter are reported in various news outlets including

<https://www.theguardian.com/world/2023/oct/31/un-official-resigns-israel-hamas-war-palestine-new-york>

<sup>124</sup> Haaretz News, 28 October 2023, <https://www.haaretz.com/israel-news/2023-10-28/ty-article-live/gazans-report-heaviest-night-of-attacks-since-outbreak-of-war-as-idf-expands-ground-op/0000018b-7420-d2fc-adcf-f77f6f340000?liveBlogItemId=914695304#914695304>

<sup>125</sup> The Guardian, 28 October 2023, <https://www.theguardian.com/world/2023/oct/28/netanyahu-declares-a-second-war-of-independence-as-fears-for-gazans-grow>

Amalek has done to you, says our Holy Bible, and we do remember, and we are fighting” and announcing that the "supreme" goal of Israel's military operation is to "completely defeat the murderous enemy and guarantee our existence (as a state)"<sup>126</sup>

#### Further evidence of Australian Government Minister complicity

89. The Assistant Minister for Defence, Assistant Minister for Veterans' Affairs, and Assistant Minister for the Republic, Matt Thistlethwaite, in his capacity as Assistant Minister for Defence stated:

- a. [When asked: Another issue if that is okay, why did Australia abstain from voting in the UN General Assembly calling for an immediate humanitarian truce in the Middle East?:] *“The Australian Parliament passed a resolution a couple of weeks ago, the resolution was moved by the Prime Minister and seconded by the Opposition leader. The resolution was very clear. It condemned Hamas’ attack on Israel and the Israeli people. It ensured that it recognised that the State of Israel had a right to defend itself and its people. It called for the immediate release of hostages. And importantly, it recognised the importance of upholding international humanitarian law in this conflict. And we welcome the fact that Jordan raised this issue in the United Nations and there was a debate about this issue. But Australia abstained because the motion didn’t reflect what was passed in the Australian Parliament in that it did not recognise Hamas as the initial aggressor in this particular conflict. We welcome the fact that the United Nations is discussing this. That is why the Australian government has been calling for a humanitarian pause on the Israeli military to ensure that food, water, fuel supplies can safely get into Gaza and importantly, that people who wish to leave the area can do so safely. So, we’ve been consistent with the motion that’s been passed by the Parliament. And that is one that upholds international humanitarian law in this conflict.”*<sup>127</sup>

### **29 OCTOBER 2023**

#### Further evidence of Israel’s international crimes

90. On 29 October 2023, the United Nations Office for the Coordination of Humanitarian Aid reported that “13 hospitals still operational in Gaza city and northern Gaza have received repeated evacuation orders in recent days”, and that “Thousands of patients and medical staff, as well as about 117,000 internally displaced persons (IDPs), are staying in these facilities.” It reiterated the statement by World Health Organisation on 26 October 2023 “that it is impossible to evacuate patients without endangering their lives.” UNOCHA confirmed the statement by the Humanitarian Coordinator for the Occupied Palestinian Territory, Lynn Hastings, that “for people who can’t evacuate – because they have nowhere to go or are unable to move – advance warnings make no difference.”<sup>128</sup>

91. In the same statement, the UNOCHA noted that Israeli military has struck the areas around Al-Quds and Al-Shifa Hospitals in Gaza City, as well as the Indonesian Hospital in Beit Lahia.<sup>129</sup>

#### Further evidence of Australian Government Minister complicity

<sup>126</sup> Sky News, 28 October 2023, <https://news.sky.com/video/israel-hamas-war-we-will-fight-and-we-will-win-says-benjamin-netanyahu-12995212>

<sup>127</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-28/press-conference-randwick-army-barracks>

<sup>128</sup> UNOCHA, 29 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-23>

<sup>129</sup> UNOCHA, 29 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-23>

92. The Prime Minister stated:

- a. [When asked: What about China's role on the world stage? Xi Jinping's just hosted Vladimir Putin in Beijing. He's refusing to condemn Hamas. Are those things you'll raise?:] *“Absolutely. We have a very different position when it comes to the actions of a terrorist group like Hamas, and we've seen the dreadful consequences. The consequences of the Russian invasion of Ukraine, continue to reverberate around supermarket shelves in Australia. So Australia needs to engage with the world, we need to have a seat at the table and my Government's determined to do so.”*<sup>130</sup>

### **30 OCTOBER 2023**

#### **Further evidence of Israel's International crimes**

93. Diakonia International Humanitarian Law Centre summarised the devastation on civilians:

“There are reports about damage to hospitals, water and sanitation facilities, telecommunications lines, schools and educational facilities (more than 40 percent of which have been struck), mosques, and churches.”<sup>131</sup>

94. As exposed by independent journalist Yuval Abraham on October 30 - The Israeli Intelligence Ministry published a document labeled: Options for a policy regarding Gaza's Civillian population. This document set out 3 possible solutions to the Gaza civilian conundrum with the following conclusions:

- a. Allowing for the set up/importation of Palestinian Authority rule is dangerous for Israel as it will encourage the establishment of a Palestinian state, clearly stating that right now “the division between the Palestinian population in Judea and Samaria (West Bank) and Gaza is one of the central obstacles preventing the establishment of a Palestinian state.” which in turn prevents the victory of Palestinian nationalists and allows for Israelis to live in peace.
- b. The best and proposed solution is for “Evacuation of the civilian population from Gaza to Sinai” with the following statement:
  - i. “A sterile zone of several kilometers should be created within Egypt, and the return of the population to activities/residences near the border with Israel should not be allowed. In addition, a security perimeter should be established in our territory near the border with Egypt.”
- c. The importance of the complete removal of the palestinian people from the land and the refusal for their return is emphasised several times. Also mentions the importance of “Instilling a sense of failure in the population [palestinians] will help create an improved security situation for many years and deter the population [palestinians]” as well as the following:
- d. “Dedicated campaigns for Gaza residents themselves to motivate them to accept this plan —the messages should revolve around the loss of land, making it clear that there is no hope of returning to the territories Israel will soon occupy, whether or not that is true. The image needs to be, “Allah made sure you lose this land because of Hamas' leadership — there is no choice but to move to another place with the assistance of your Muslim brothers.””
- e. A list of countries who should be responsible in helping achieve this plan as well as ways to apply pressure and use incentives was also included in pages 7, 8 and 9.<sup>132</sup>

#### **Further Evidence of Australian Government Minister complicity**

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<sup>130</sup> <https://www.pm.gov.au/media/television-interview-abc-insiders-0>

<sup>131</sup> Diakonia International Humanitarian Law Centre, 30 October 2023, <https://www.diakonia.se/ihl/news/2023-hostilities-in-gaza-and-israel-factual-account-of-events/>

<sup>132</sup> <https://www.scribd.com/document/681086738/Israeli-Intelligence-Ministry-Policy-Paper-on-Gaza-s-Civilian-Population-October-2023>

95. The Assistant Minister for Defence, Assistant Minister for Veterans' Affairs, and Assistant Minister for the Republic, Matt Thistlethwaite, in his capacity as Assistant Minister for Defence stated:

- a. [When asked: For more on this, let's bring in the Assistant Defence Minister, Matt Thistlethwaite. What's your reaction to a statement of unity from six former Prime Ministers?:] *"G'day Kieran. We certainly welcome the statement that's been made by the former Prime Ministers. It reiterates Australia's view that this was an unprovoked attack by Hamas, that they stand condemned for that. Israel has the right to defend itself. But importantly, how Israel defends itself is very important as well, and there needs to be upholding of international law and ensuring that the sanctity of civilian life, particularly children, is protected. And, of course, it reiterates the importance of a two-state solution. So, something that's welcomed by the government, and it certainly reflects the motion that was passed on a bipartisan basis through the Parliament when we last sat."*<sup>133</sup>
- b. [When asked: Has the Government's position and its support for Israel's right to defend itself been diminished by the comments made by some of the Ministerial colleagues? Tony Burke last week was asked whether or not we're seeing genocide and apartheid in Israel. He didn't repudiate that. He's been criticised for his comments by Peter Dutton and Jewish groups. What's your reaction to that and that suggestion that Mr Albanese has lost the discipline and unity of his cabinet on it?:] *"Well, the motion was very specific, and it outlined that we condemned the attack by Hamas, that we called for the immediate release of all hostages, that we recognised that Israel has the right to defend itself and that's pretty important. And, of course, that humanitarian and international law must be upheld. And that was supported by every single member of the Labor Party and we've been pretty consistent in calling for that to occur. And that was reflected in the approach that the Government took in the UN resolution that was debated last week. Obviously, different MPs have different constituencies. They need to represent those constituencies. But in terms of the resolution that's been passed by the Parliament, that is a reflection of the view of the Australian Government, it's been supported by all Labor members, and we'll continue to support that position. The important thing from Australia's perspective is that we work as closely as we can to get Australians out of the region that want to return home, and we've been doing that, and that we call for that humanitarian assistance to reach those in need as quickly as possible."*<sup>134</sup>
- c. [When asked: Time now for our political panel. And we're joined today by Labor frontbencher, the Assistant Defence Minister, Matt Thistlethwaite. He's in Townsville today. And Liberal frontbencher, the Shadow Environment Minister Jonathon Duniam, who joins us from our Hobart studio. Gentlemen, welcome to Afternoon Briefing. Matt Thistlethwaite, I want to start with you on this issue of the UN resolution and the criticism that's been levelled at the Government by Peter Dutton. Why was it decided that Australia wouldn't vote in favour of this motion? Can you explain that to our audience?:] *"Well, it's simply that the Australian Government followed the process that was undertaken in the Parliament, and we followed the resolution that was passed by the Prime Minister and the Leader of the Opposition, moved by him, seconded by the Leader of the Opposition in the Parliament. And that resolution clearly said that it condemned Hamas' attack on Israel, it called for the immediate release of hostages and it defended Israel's right to defend itself, as well as pointing to humanitarian law and ensuring that the humanitarian law is upheld. That's the reason why the motion that was put at the UN moved by Jordan didn't reflect what the Australian Government's position was, and that was enunciated in the motion moved in the Parliament. So, in many respects, we just followed proper process and followed the views of the Australian people as enunciated by the motion in the Parliament."*<sup>135</sup>

<sup>133</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-30/television-interview-sky-news-afternoon-agenda>

<sup>134</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-30/television-interview-sky-news-afternoon-agenda>

<sup>135</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-30/television-interview-abc-afternoon-briefing>



- d. [When asked: Matt Thistlethwaite, is it a bit embarrassing to have a seat at this forum in the United Nations and then not really actually join in and put your voice to this cause?:] *“Well, the motion calls for humanitarian aid and support for civilians and innocent people who are trapped in Gaza. And that's something that is consistent with the position that was taken by the Australian Government and the Parliament. So, we don't deny that. And to vote against that doesn't reflect what was passed in the Parliament. And it also makes it a lot harder when the Australian Government is trying to work in the context of getting the 88 Australians that are still trapped in Gaza that do want to leave. It makes it harder if you're going to the UN and voting against the resolution that actually supports something like that. And that's why the Foreign Minister has been consistent with the motion that was passed by the Parliament, the approach that was taken in the UN and in calling for a humanitarian pause to the Israeli military action to allow essential food, water, sanitation, fuel supplies into Gaza. But importantly as well, to allow Australians and other internationals who wish to leave that area, the innocent civilians, to be able to get out as quickly as possible. And that's the responsible thing to do to uphold that approach through the UN. And that's what we did.”*<sup>136</sup>

96. Minister for Foreign Affairs, Penny Wong stated:

- a. [When asked: Has bipartisanship broken down on Israel?:] *“I'm sure that Mr Dutton, as always, is seeking to make political points, to find political difference, because that is his instinct. He always wants to find political difference. What I would say is this is a dreadful, tragic conflict. We are seeing loss of life. We are seeing civilians on both sides have been murdered. We have seen civilians up on both sides in a lot of pain, and obviously, we still have Israeli hostages who have been taken, that Hamas is still holding. What I would say is this, though, when Israel's friends urge Israel to protect civilian life, as we have, it is critical that Israel listens. We are seeing continuing civilian deaths, which is, I think we saw in the United Nations vote, that the international community will not accept continuing civilian deaths.”*<sup>137</sup>
- b. [When asked: The US National Security Adviser Jake Sullivan, says that Israel should be taking every possible means to distinguish between Hamas terrorists, who are legitimate military targets, and civilians who are not. The US obviously has concerns.:] *“Well, I think Jake's words are precisely the same position as I'm articulating. We do think it's critical for Israel to ensure it does everything it can to protect civilian lives and to protect - to respect International Humanitarian Law.”*<sup>138</sup>

### **31<sup>st</sup> OCTOBER 2023**

#### Further evidence of Israel's war crimes

97. On 31 October 2023, in a press release statement by National Security Adviser and National Security Council Director Tzachi Hanegbi, it was stated: “On the diplomatic front, that the President of the United States has stood alongside Israel is of immense value. It has allowed us to continuously conduct almost an entire month and conduct a campaign of unprecedented strength in the coming period as well.”
98. On 31 October 2023, Netanyahu is reported to thank leaders for their support. During the intense bombing, Anthony Albanese was in contact with Israeli officials including president Isaac Herzog, and Prime Minister Netanyahu on 31 October 2023.<sup>139</sup>
99. On 31 October 2023, after the reported killing by Israel of two French civilians in Gaza, France's foreign ministry is reported by the Guardian news outlet to have “reiterated its call for a humanitarian pause in the fighting and demanded that French nationals and foreign citizens to

<sup>136</sup> <https://www.minister.defence.gov.au/transcripts/2023-10-30/television-interview-abc-afternoon-briefing>

<sup>137</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/interview-sabra-lane-am>

<sup>138</sup> <https://www.foreignminister.gov.au/minister/penny-wong/transcript/interview-sabra-lane-am>

<sup>139</sup> The Guardian, 31 October 2023, <https://www.theguardian.com/australia-news/2023/nov/01/anthony-albanese-australia-pm-speaks-with-netanyahu-protesters-richard-marles-office>

be allowed to leave Gaza”<sup>140</sup>. The fact that foreigners are unable to safely leave Gaza highlights the reality that:

- a. innocent Gazan civilians are trapped in Gaza,
- b. Israel is aware of this reality, and
- c. the continued relentless bombing of Gaza is an intentional act of genocide.

100. The United Nations Relief and Works Agency for Palestine reported on 31 October 2023 in relation to Gaza that: “The situation in shelters remains critical, with very limited assistance available and no additional space to accommodate the increasing number of Internally Displaced People (IDPs). More than 670,000 people are sheltering in nearly 150 UNRWA installations across the Gaza Strip, facing deteriorating humanitarian conditions and health and protection risks.”<sup>141</sup>
101. On 31 October 2023, in a press release statement by Israel’s National Security Adviser and National Security Council Director, Tzachi Hanegbi, the aim of the attack on Gaza was stated to be: “To destroy the military and governing capabilities of Hamas and Islamic Jihad so that there will no longer be a threat to the citizens of Israel from the Gaza Strip.” It was further stated: “As soon as the fact became clear – that Hamas is like ISIS, it has no constraints and views the residents of Gaza as nothing more than human dust that provides it with cover – there was no more doubt in our hearts. Hamas, with its psychopathic leadership and its sadistic murderers, must cease to be. This was the unanimous decision of the Cabinet and this is the mission that the IDF has been tasked with carrying out.”
102. On the same day, 31 October 2023, the 25<sup>th</sup> day since 7 October 2023, media outlets reported that at least six air strikes by Israel hit a refugee camp in Gaza. Video footage from the Jabalia refugee camp shows at least 47 bodies recovered from rubble after an explosion in several houses.”<sup>142</sup> At least 50 death are reported<sup>143</sup>, with some estimating the dead and wounded to be in the hundreds.<sup>144</sup>
103. On 31 October, UNICEF Spokesperson James Elder said at a press briefing at the Palais des Nations in Geneva: “Our gravest fears about the reported numbers of children killed becoming dozens, then hundreds, and ultimately thousands were realized in just a fortnight. The numbers are appalling; reportedly more than 3,450 children killed; staggeringly this rises significantly every day. “Gaza has become a graveyard for thousands of children. It’s a living hell for everyone else.”<sup>145</sup>
104. Gaza’s Health Ministry advised on 31 October 2023 that an estimated 8,525 people (including an estimated 3,542 children) had been killed in Israel’s three-week-old air and ground onslaught.<sup>146</sup>
105. The United Nations Relief and Works Agency on 31 October 2023, advised of killings in the West Bank and East Jerusalem. It stated that”: “Israeli Security Forces operations, involving Palestinian fatalities, were reported in Askar, Dheisheh, and Jenin refugee camps on 29 and 30 October. Several other Palestinians were injured during these operations, and damage to civilian infrastructure was also reported.

<sup>140</sup> The Guardian, 31 October 2023, <https://www.theguardian.com/world/live/2023/oct/31/israel-hamas-war-live-updates-latest-news-today-hamas-clashes-idf-gaza-aid-plan-failure?page=with:block-6541a09a8f08eea850f42ad5#block-6541a09a8f08eea850f42ad5>

<sup>141</sup> UNRWA, 31 October 2023, <https://www.unrwa.org/resources/reports/unrwa-situation-report-18-situation-gaza-strip-and-west-bank-including-east-jerusalem>

<sup>142</sup> For example, The Guardian, 10 AEDT, <https://www.theguardian.com/world/live/2023/oct/31/israel-hamas-war-live-updates-latest-news-today-hamas-clashes-idf-gaza-aid-plan-failure?page=with:block-6541a09a8f08eea850f42ad5#block-6541a09a8f08eea850f42ad5>

<sup>143</sup> <https://www.abc.net.au/news/2023-11-01/israel-gaza-war-latest-updates/103046888>

<sup>144</sup> <https://www.aljazeera.com/news/liveblog/2023/10/31/israel-hamas-war-live-israeli-air-attacks-continue-across-gaza?update=2451841>

<sup>145</sup> UNICEF, 31 October 2023, <https://www.unicef.org/press-releases/gaza-has-become-graveyard-thousands-children>

<sup>146</sup> <https://www.abc.net.au/news/2023-11-01/israel-gaza-war-latest-updates/103046888>

106. “According to the OCHA [United Nations Office for the Coordination of Humanitarian Affairs], 121 Palestinians have been killed in the West Bank since 7 October.<sup>147</sup>
107. On 31 October 2023, several aid agencies confirmed that the road conditions in Gaza, bombing, and lack of fuel impede the distribution of whatever aid arrives.
108. The United Nations Relief and Works Agency for Palestine reported on 31 October 2023 in relation to Gaza that: “[i]n the last 24 hours, three UNRWA staff have been killed in ongoing strikes, while in their houses with their families, bringing the total to 67 UNRWA colleagues killed since 7 October.”<sup>148</sup> This impacts directly on the running of their 150 shelters and more than 670,000 displaced Gazan civilians.
109. Other aid organisations report similar concerns and outcomes, including the International Federation of Red Cross and Red Crescent Societies and the World Health Organisation.<sup>149</sup> Christian Lindmeier, a World Health Organisation spokesperson warned of “an imminent public health catastrophe.”<sup>150</sup>
110. On 31 October 2023, Amnesty International reported that the Israeli army fired artillery shells containing white phosphorus in military operations along Lebanon’s southern border between 10 and 16 October 2023. Amnesty International further stated that the attack on the town of Dhayra on 16 October must be investigated as a war crime because it was an indiscriminate attack that injured at least nine civilians and damaged civilian objects, and was therefore unlawful.
111. Aya Majzoub, Deputy Regional Director for the Middle East and North Africa at Amnesty International stated: “It is beyond horrific that the Israeli army has indiscriminately used white phosphorous in violation of international humanitarian law. The unlawful use of white phosphorus in Lebanon in the town of Dhayra on 16 October has seriously endangered the lives of civilians, many of whom were hospitalized and displaced, and whose homes and cars caught fire”<sup>151</sup>
112. In the same report dated 31 October 2023, Amnesty International further confirmed use of white phosphorus in other locations including the border town of Aita al-Chaab and near the town of al-Mari in southern Lebanon.<sup>152</sup>

#### Further evidence of Australian Government Minister complicity

113. The Prime Minister stated:
- a. [When asked: Do you support the letter signed by former Prime Ministers, and why do you think Paul Keating didn't sign it?:] *“I think that's a question for Paul Keating, I would have thought. I support the positions that I've taken, and the position in the Parliament last Monday was done with overwhelming support. It is important that we recognise that the attacks from Hamas on Israel are worthy of absolute condemnation in an unequivocal way. It's also important to recognise that Israel has a right to defend itself, but how it does that matters. And we need to make sure as well, that every civilian life is valued, whether it be Israeli or Palestinian. Every innocent loss of life is a tragedy. And that is why we remain very concerned and continue to put forward our case while we've provided humanitarian assistance, as well, to Gaza, some \$25 million dollars has been provided so far. The people of Gaza, innocent people are suffering, innocent people, of course in Israel, which is as a result of the attacks by Hamas, you saw people literally hunted down and we continue to call as well, for the release of*

<sup>147</sup> <https://www.unrwa.org/resources/reports/unrwa-situation-report-18-situation-gaza-strip-and-west-bank-including-east-Jerusalem>

<sup>148</sup> UNRWA, 31 October 2023, <https://www.unrwa.org/resources/reports/unrwa-situation-report-18-situation-gaza-strip-and-west-bank-including-east-Jerusalem>

<sup>149</sup> <https://www.theguardian.com/world/2023/oct/31/dozens-killed-after-israeli-airstrikes-on-gaza-refugee-camp>

<sup>150</sup> <https://www.theguardian.com/world/2023/oct/31/dozens-killed-after-israeli-airstrikes-on-gaza-refugee-camp>

<sup>151</sup> Amnesty International, 31 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/lebanon-evidence-of-israels-unlawful-use-of-white-phosphorus-in-southern-lebanon-as-cross-border-hostilities-escalate/>

<sup>152</sup> Amnesty International, 31 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/lebanon-evidence-of-israels-unlawful-use-of-white-phosphorus-in-southern-lebanon-as-cross-border-hostilities-escalate/>

hostages. There is no place for that sort of activity that we've seen and this is a very difficult time for people with families, whether they be in Israel or in Gaza.”<sup>153</sup>

114. The Minister for the National Disability Insurance Scheme and Minister for Government Services, Bill Shorten stated:

- a. [When asked: Well, disagreeing, other members of the Labour Party, have differing views when it comes to Israel-Palestine. That’s my point.:] *“Oh, some of that happens in the Liberal Party. You'd be aware that at Canterbury, the local government area in Sydney, the Liberal councillors, along with the Labor councillors, took a position and the position that the local Liberal councillors took is different to some of their federal representatives. No, in terms of our cabinet, there is a high degree of agreement about the right of Israel to exist, the right to defend itself, and a shock and horror at what happened on October the 7th. But there's also agreement that there's a lot of dire hardship for Palestinian civilians, that they're the victims of Hamas as much as Israelis living on the border were, and that the call for a humanitarian pause to provide relief for Palestinians caught up in a situation not of their making, again supported by all the members of the government.”*<sup>154</sup>
- b. [When asked: They are. And just back to a point that you referred to just a moment ago, Penny Wong, she's got the view that Israel runs the risk of isolating itself from the global community. It's a claim that's been backed by the US, if the civilian death toll continues to climb, do you agree with her on that point?:] *“I think that Israel already has a hard job in the Middle East. Many of the countries around it don't recognize its right to exist. But Penny is making the point that Israel absolutely has a right to defend itself, but she also says that the way Israel defends itself matters.”* [Yeah.:] *“I think there's a huge amount of sympathy after October the 7th for, you know, the shock and horror of the hostages taken, the people killed and murdered in their own homes by Hamas. But there's also a point where you've got to be mindful that there's the international rules of war, and that civilians everywhere shouldn't suffer because of the actions of a gangster government in Gaza. But it's very difficult. Look, no one - I don't think anyone watching this really thinks it's simple, but I think there is universal condemnation of Hamas and what they did on October the 7th.”*<sup>155</sup>
- c. [When asked: Sure. And like as a keen observer of, of foreign politics, do you believe, like Penny Wong had said, that Israel runs the risk of isolating itself if that civilian death toll keeps climbing too high?:] *“Well, I hope that the matter resolves before the civilian death toll goes too high. There's no doubt that world opinion, there's quite a lot of people were sympathetic to Israel after October the 7th, but the hard fact is that democracies get judged by higher standards than dictatorships. So, it's important that the way in which Israel conducts its mission adheres to some international norms, although that's a lot easier to say from the comfort of a studio 14,000km away. The situation on the ground is very shocking and I feel for Israel whose, some of the neighbouring countries basically don't even think they should exist. So, I do think that Israel has to, to the extent it can, be mindful of the civilians in Palestine, they're not the enemy. They're not the enemy.”*<sup>156</sup>

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<sup>153</sup> <https://www.pm.gov.au/media/doorstop-interview-bundaberg>

<sup>154</sup> <https://ministers.dss.gov.au/transcripts/12946>

<sup>155</sup> <https://ministers.dss.gov.au/transcripts/12946>

<sup>156</sup> <https://ministers.dss.gov.au/transcripts/12946>